# LAND USE POLITICS AND LAW IN THE 1970's

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# CHAPTER 1

## INTRODUCTION

Piecemeal governmental planning of land usage has recently been recognized as a major environmental, legal and political issue in the United States, one which could likely become a key consideration in the 1976 election year.[1] The issue is closely identified with the twentieth century. Whereas much American land was cleared, settled and used for various purposes decades earlier, not until this century's rapidly spreading urbanization and industrialization did the importance of regulating the use of land become clearly apparent. Less apparent until recent times was the possible seriousness of the problem, but it is now said that the country will likely experience "a truly national land use crisis" unless forceful governmental action is taken.[2]

Reasons for widespread concern over land use surround the urban American and are becoming more evident to those in nearby rural communities. Uncontrolled large-scale development, demands for additional public services to meet escalating growth, rising taxes, suburban sprawl, deterioration of the environment, traffic congestion, and related growth traits profoundly affect the quality of life in beleaguered urban areas. Rural areas are simultaneously experiencing related problems as farm lands and forests are converted for urban-industrial usage and as critical environmental areas are threatened. This entire process and its future implications have been summarized by Sen. Henry M. Jackson (D-Wash.) in the following way:

> Over the next 30 years, the pressures upon our finite land resource will result in the dedication of an additional 13 million acres or 28,000 square miles of undeveloped land to urban use. Urban sprawl will consume an area of land approximately equal to all the urbanized land now within the 228 standard metropolitan statistical areas--the equivalent of the total area of the States of New Hampshire, Vermont, Massachusetts, and Rhode Island. Each decade, new urban growth will absorb an area greater than the entire State of New Jersey. The equivalent of 2½ times the Oakland-San Francisco metropolitan region must be built each year to meet the Nation's housing goals. . . .
>
> In short, between now and the year 2000, we must build again all that we have built before. We must build as many homes, schools, and hospitals in the next three decades as we built in the previous three centuries. In the past, many land use decisions were the exclusive province of those whose interests were selfish, short-term and private. In the future--in the face of immense pressures on our limited land resource--these land use decisions must be long-term and public.[3]

Responding to this potential "crisis," most state governments, a Democratic Congress and a Republican administration have recognized during the last few years the vital need for improved usage of privately owned land. As part of this response governors and legislators of varying political persuasions have supported the enactment of new state land use controls throughout the nation: in California, Colorado, Florida, Hawaii, Louisiana, Maine, Michigan, Minnesota, New Hampshire, Ohio, Oregon, Vermont, and Wisconsin, to name prominent examples.[4] In the 1974 state elections perhaps the greatest victory for land use control proponents occurred in Colorado where Democrat Richard Lamm, a leader in that state's growth control movement, defeated incumbent Republican Governor John D. Vanderhoof.[5]

In terms of the Congress, the United States Senate overwhelmingly passed a federal land use law in 1973 which encouraged state regulation of critical environmental areas and large-scale development.[6] Although that legislation was narrowly defeated in the House of Representatives, in view of recent electoral results it seems probable that similar proposals will be introduced in upcoming sessions with a greater likelihood of passage. During the 1974 mid-term landslide election of Democrats, the land use issue was important in congressional districts in a variety of states.[7] Questions of growth were strategic in many urban centers. Environmental groups, including the League of Conservation Voters and Environmental Action, were encouraged by victories of environmentalist congressional candidates in California, Illinois, Indiana, Iowa, Massachusetts, Oregon, Pennsylvania, Virginia, Washington and Wyoming. They were disappointed, however, by the re-election of certain opponents of national land use legislation--especially that of Rep. Sam Steiger (R-Ariz.).[8]

With respect to the White House, former President Richard M. Nixon reannounced in his 1974 State of the Union address that passage of a national land use law was a high environmental priority.[9] Since Nixon's resignation, President Gerald R. Ford has suggested that his administration will support passage of a federal land use law by the 94th Congress.[10] But the extent of that support has yet to be seen, and it could well be that Ford--like his predecessor--will accept only a weak, revised version of previously proposed measures. In his speech to Congress in January 1975, Ford failed to mention the land use question but did demonstrate more

concern with the energy shortage than with the environment.[11]

Despite some resistence in both major parties, the question of controlling land usage nevertheless seems to be maturing into an increasingly nonpartisan issue because more political leaders realize its critical nature and more citizens complain about commonplace land problems.[12] This short study seeks to promote an understanding of recent political facets of the land use issue and the legal authority for governmental action by state and federal officials under given conditions. It also attempts to suggest some current and future implications of these political and legal developments. Thus Chapter 2 provides an overview of local versus state versus federal powers and practices for solving the nation's land use challenge. Chapter 3 analyzes land use law and politics in five states playing active roles in land control. Chapter 4 turns to land politics and law at the federal level, stressing three key legislative measures. Then Chapter 5 presents some of the impacts of current land use law and politics, and addresses likely future implications as well. Each chapter's theme is intended to be general yet concise, with primary emphasis on legal and political developments since 1970.

## CHAPTER 2

## A POLITICAL AND LEGAL OVERVIEW

For safeguarding the health, safety, welfare and morals of the public, states possess authority to regulate land utilization within their boundaries under the Tenth Amendment of the United States Constitution. However, through state enabling acts most legislatures have delegated virtually the entire responsibility for land use planning to local governmental units. Local zoning boards have in turn been established in most cities of any size to implement planning powers.[1]

Proposing maps and ordinances, these local planning agencies oversee land usage--the residential-commercial-industrial nature of buildings in particular areas, their height and density, subdivision development and related matters.[2] Such planning efforts are frequently said to be "comprehensive" in nature, to promote a broad, rational policy-making approach to urban problems. They are designed for both physical and aesthetic purposes with the goal of establishing a desirable overall scheme for the urban environment. In so doing, political considerations inevitably appear.

If, as David Easton has written, politics involves the "authoritative allocation of values for society,"[3] then the land use planning process is in no small measure political in nature. In this process the interests of numerous individuals and groups are plainly affected when selected lines of planning action are adopted and implemented. As put by Alan Altshuler, "Significant planning problems are never simply technical; they always

involve the determination of priorities among values."[4] And these values are deeply held; as Jack Anderson recently pointed out, "for many special interests, . . .the land use issue is more controversial than busing or abortion."[5] Moreover, it constitutes a political issue not only because values are authoritatively allocated, but because land use is intricately related to other major issues (energy conservation, housing, transportation, etc.) and because it profoundly affects so many fundamental aspects of everyday life (the location of where people live and work, their sewage and water facilities, transportation systems, recreation alternatives, and the many economic considerations involved in such questions).

Take the case of the suburbs, where the issue of additional development outside a metropolitan area is usually of great concern to citizen groups, real estate-business interests and governmental officials.[6] Citizen associations are often most anxious to stop undesirable land usage within their specific community. "Undesirable" uses may include rezoning which would permit new commercial activity, industry or low cost housing, thus bringing in newcomers of lower socio-economic status. Real estate interests, by contrast, are prone to support continued commercial development and higher population densities. They may therefore find themselves in conflict with organized citizens of an area, but in strong agreement with the local chamber of commerce or the economically disadvantaged who support low cost, high density housing. In these instances traditional "liberal" and "conservative" labels are sometimes inapplicable, for

environmentalists may oppose actions which would most help upgrade the lives of poorer citizens, while developers may favor such actions.

Between these opposing camps are elected officials and professional planners, each well aware of the positions of these groups. As might be expected, each group finds that certain officials are more sympathetic with their positions than others, a fact which may give rise to intragovernmental friction. In suburban planning commissions, for instance, "The planning staff will commonly be composed of professionals well versed in planning theory and liberal values, while the commission will frequently represent either the citizens or real estate point of view (or be split between the two), which may lead to an undercurrent of conflict and distrust between the lay and professional portions of the planning bureaucracy."[7] A chief reason for this conflict and distrust is that political officials typically furnish little guidance for planners in the early stages of their work--when strategic choices among opposing values must be weighed. Indeed, this is often thought of as "a principle of political prudence: that it is politically unwise for an elective official to say anything at all during the early life of any idea."[8] Only later, when value clashes become plainly evident, does political conflict surface in many cases.

For several reasons this local approach to planning has all too often failed to promote the desired results--coordinated land use.[9] Local governments are typically fragmented structures, a fact which works against effective regulation and for ad hoc decision-making based upon immediate

political, economic, social pressures. Aside from that, local officials may be major landowners themselves and thus may have a fundamental interest in preserving the status quo. In some instances these officials may be highly dependent on campaign contributions from those who control property within a community. But no matter what the particulars of a certain situation, local officials derive a great deal of their influence from the power to make land use-related policy. They naturally resist trends toward state exercise of authority in these areas, and this resistance is sometimes loudly voiced to their constituents and state political allies. Despite resistance, however, if this approach to land use regulation is to be retained, a good case can be made for significant reforms in many respects, regardless of current local power structures.

A principal alternative for state governments is to assert their own planning powers. This is not to say, of course, that all land use planning is best handled in the state capitals. Rather, the assumption is that state officials are more inclined to view land problems from a broader perspective, when impacts extend beyond a particular community. Nonetheless, with few exceptions, state legislatures have been reluctant to pass broad-ranging land use control measures to be enforced by state planning agencies, although state governments obviously regulate certain narrow areas of concern, including coastal lands, surface mining, power plant sitings, and wetlands, to name a few. Still, in many instances state officials recognize that the present arrangement, characterized by delegation of power to local governing bodies, has fallen short of prohibiting chaotic

growth patterns in much of the nation. They recognize, too, that local governments respond to political, social, legal, economic and other demands on a case-by-case basis.

These problems and failures have therefore spurred a "new mood" in many states. This mood favors stronger state laws to control land utilization, to protect areas of critical environmental concern, and to regulate development of more than local impact.[10] Only the future will tell whether this political and legislative trend will avert a land use crisis of national proportions. Based on the 1950's and early 1960's, chances for adequate controls looked bleak, since state legislation normally failed to address these issues aggressively. But as will be explained, when viewed from the vantage point of the last half-dozen years, in combination with the likelihood of future federal assistance, trends appear more heartening.

While some observers support purely state and local solutions to land use problems, others believe that the best current hope for avoiding the so-called national land use crisis is dependent on federal action.[11] Dozens of federal laws influence various limited aspects of land use in the states, particularly through funds for housing, sewer and highway construction, and the location of airports.[12] But these advocates argue that new federal legislation is needed. The answer to many land utilization problems, they feel, would have been provided by the recently proposed Land Use Policy and Planning Assistance bill.[13] However, the controversial nature of the issue, mobilization of interests to be adversely affected, and impeachment politics combined to prevent the bill's passage.

A closer look at this bill proves instructive, for it is a noteworthy recent illustration of the workings of the political process in land use regulation. The Senate's version of the Land Use Policy and Planning Assistance Act (S. 268) passed on June 21, 1973, by a convincing vote of 64 to 21. At that time it seemed likely that a national land use law would be enacted which would authorize in the neighborhood of $800 million to state governments over eight years for developing land use planning processes and programs. Proponents of the measure gained strong backing, and most observers seemed to agree that the bill would strengthen state and local governmental planning efforts by providing substantial federal funds with few strings attached.

Movement toward passage was much slower in the House of Representatives, however.[14] Although President Nixon had pledged his support for a national land use measure since 1971,[15] during the winter of 1973 the House Interior Committee was still drafting a bill (H.R. 10294). Congressional opponents, led by Representative Steiger, debated the merits of any involvement by the federal government at all, stalled for support of their position, and were particularly adamant against the level of funding and sanctions to be imposed upon states not complying with the legislation. They asserted that such a statute would infringe upon property rights, give the federal government too much of a voice in precisely how state and local officials plan the use of land, and needlessly create another federal bureaucracy. Rep. Morris K. Udall (D-Ariz.), the measure's sponsor in the House, was able to get the bill reported out of committee in late January 1974, with

the same level of funding as set by the Senate. But the next roadblock was the House Rules Committee, responsible for establishing procedures for floor debate. After a month the news came--the Committee vote was 9 to 4 to delay House consideration.[16] Meanwhile, lobbyist activity accelerated; interest group support and opposition solidified.[17] For the bill were the following groups: the National Governors' Conference, the National Legislative Conference, the National League of Cities-U.S. Conference of Mayors, the National Association of Counties, the American Institute of Planners, the National Audobon Society, the Sierra Club, the National Wildlife Federation, the Izaak Walton League, and the League of Women Voters, to name several. Against it stood the U.S. Chamber of Commerce, the American Farm Bureau, the National Forest Products Association, the American Mining Congress, the National Association for Conservation Districts, and the American National Cattlemen's Association. Political lines were firmly drawn.

According to some accounts a split became evident in the Nixon administration during April, with the Interior Department supporting the House bill but with the President developing reservations. Nevertheless, after apparent instructions from the President, Secretary of the Interior Rogers C. B. Morton publicly announced that Nixon still advocated a "responsible and effective" land use law which would insure a basic federal role.[18] Then in May, when Rules Committee members finally agreed by a narrow vote to send the bill to the House floor, the stage was set for a Nixon administration turnabout, as its support shifted toward the opposition Steiger-Rhodes bill.

One explanation for this change seems clearly to be that President Nixon was seeking conservative congressional support on the impeachment question. Yet regardless of the reasons for this change, it significantly strengthened opposition to the proposed legislation. The House bill was defeated on June 11, 1974, by a narrow 211 to 204 vote.[19] As before, principal arguments advanced against it were that it would infringe upon property rights and increase federal powers at the expense of state and local control of land use. Senator Jackson and Representative Udall, both presidential aspirants for 1976, subsequently insisted that the bill had been misunderstood and that "impeachment politics" had killed it. In Udall's words, "The President is grandstanding for the right wing. He's giving in to them on every major issue. This was straight impeachment politics."[20]

This seemingly bitter fight over national land use legislation indicates that here are issues of major environmental, political and legal proportions. Not until the present or a future session of Congress will they be resolved. Meanwhile, land use problems will have to be addressed by existing state and federal laws, the subjects of upcoming chapters.

CHAPTER 3

# TRENDS IN STATE LAND USE CONTROL: A CASE STUDY APPROACH

Robert A. Dahl, an astute observer of American politics, has characterized state and local government in the United States in terms of its "bewildering variety."[1] And just as variety characterizes these governmental units, states have authorized varying degrees of land use planning and control over the last decade.[2]

Diversity of land use law in the different states has recently been examined and explained from several points of view. From the standpoint of state development plans, one study evaluated the laws of all fifty states between 1967 and 1972.[3] It concluded that nine states had adopted a "significant" development plan, nineteen had a "moderate" plan, and in twenty-two plans were "limited." From another vantage point that survey found that nine states had established "significant" development controls, twelve had "moderate" controls, and in twenty-nine controls were "limited." Others, employing a somewhat different approach, concluded in 1973 that half the states possessed laws providing for a state land use plan and nine allowed state control over local planning.[4] By contrast, twenty-three states had sanctioned neither state land use control nor a state plan. According to the same study, low degrees of legislative activism and high degrees of diversity were also evident from other viewpoints. Only ten of the thirty-one coastal states, for example, had enacted statutes

authorizing state review of local coastal zone management, just fourteen legislatures had passed laws establishing state standards for wetland development, and merely seven states explicitly required a state permit for siting power plants and related facilities. On the other hand, twenty-six states regulated surface mining, an area of relatively widespread state control.

To clarify these trends in states actively managing land usage, five--Hawaii, Florida, Colorado, Maine and Vermont--are chosen for examination here. They represent the major regions of the nation, varying degrees of industrialization and wealth, and both high and low population densities. They thus provide contrasting case studies of land use law and politics at the state level during the 1970's, exemplifying the "bewildering variety" that is plainly manifest among the states generally.

In Hawaii, where the vast majority of all land is owned by a few individuals or the government, a progressive approach to land use regulation was adopted soon after entrance into the Union. This may be explained chiefly by Hawaii's political heritage favoring a strong central government, important geographic and economic considerations, and the fact that plantation owners strongly supported preservation of agricultural lands.[5] The Hawaiian Land Use Law of 1961[6] established a State Land Use Commission which has subsequently divided the land of Hawaii--public and private--into four principal land use districts: urban, rural, agricultural and conservation.[7] Speaking generally, land in those districts may be utilized only for purposes mandated by the land use law or permitted by the

Commission. In this respect the Hawaiian law created a precedent now being weighed in other states.[8] That precedent assumes that privately owned land is a private commodity and a public resource, "that the state would treat [private] land not merely as a commodity to be bought and sold, but also as a natural resource to be protected."[9]

When contrasted to other states, features of the Hawaiian approach suggest that it has perhaps the most extensive land use control program of all.[10] There is ample state authority for progressive land use regulation, and the responsibility has been accepted in large measure by the Land Use Commission, which plays a vigorous implementation role. Under this system the Commission has responded to land utilization problems; it has adjusted district classifications to changing conditions; and it has provided high standards for land use by resisting pressures for continuing development. As of late 1970 some 200 petitions had been filed with the Commission to rezone urban districts to include land previously classified for rural, agricultural or conservation purposes. These Commission decisions have for the most part favored preserving agricultural lands of the state.[11] While Hawaii's counties continue to make zoning decisions with regard to urban land, the State Land Use Commission and the Department of Land and Natural Resources exercise control over land use in agricultural, rural and conservation districts. District boundaries may be changed by the Commission, with citizens petitioning the state Commission (and county commissions) for permits allowing land usage other than that prescribed by classifications.[12] This approach seems effective to this

point-in-time primarily because state agencies have forcefully assumed the responsibility for implementing the program at the state level.

All this is not to say that Hawaii's Department of Planning and Economic Development faces no major problems, or that it is able to carry out its programs immediately or to the fullest extent desirable, or that the Commission staff is of sufficient size to execute its broad mandate thoroughly. Problems have indeed been reported concerning the Hawaiian approach: conflict has occurred among various state agencies involved in land use activities; the state plan may have been obsolete for a period of time; the Land Use Commission's decision-making process could be improved according to certain sources; and some Hawaiians disagree as to whether the Commission bases its decisions on the "right policies."[13] But combined with Hawaii's successes, these problem-areas seem to have strengthened the innovative land use attitudes which have matured there. When compared to other states, Hawaii's legislature has provided strong leadership and appears to have funded its planning activities satisfactorily.

With regard to federal land use-related legislation, Hawaiian officials supported the national land use act recently defeated in Congress. But presently the state is not receiving a great deal of assistance from federal programs. A small amount of money has been given to Hawaii under the Rural Development Act of 1972,[14] and it is now to receive funds under the Coastal Zone Management Act of 1972.[15] Still, as in most states, the primary source of present federal funds is through the so-called 701 housing program administered by the Department of Housing and Urban Development.[16]

Perhaps the greatest advances in land use management within the South have occurred in Florida, a state where the political environment was conducive to change for at least three reasons.[17] First, there existed in several communities strong citizen movements opposing further growth. Next, reapportionment of the state legislature under Baker v. Carr[18] had assured a more representative, responsive and urban-oriented decision-making forum to resist past apathy toward land use issues at the state level. And third, drought conditions affecting much of south Florida clearly stimulated the state political leadership to action.[19] The results were that Governor Reubin Askew appointed a Task Force on Resource Management which drafted needed legislation. A variety of interest groups and the state legislature then joined hands to support and enact the Environmental Land and Water Management Act of 1972.[20]

Broader in scope than merely land and water management, the 1972 Florida law is more far-reaching than its title implies. It partially adopts the 1971 Model Land Development Code designed by the American Law Institute.[21] It is also similar to the recently defeated Land Use Policy and Planning Assistance bill in that the Florida law allows restrictions on development in areas of critical environmental concern or development of regional impact. Concerning the first restriction, the Environmental Land and Water Management Act empowers the state land planning agency, the Division of State Planning of the Department of Administration, to:

> recommend to the administration commission [the Governor and the Cabinet] specific areas of critical state concern. In its recommendation the agency shall

> specify the boundaries of the proposed areas and state the reasons why the particular area proposed is of critical concern to the state or region, the dangers that would result from uncontrolled or inadequate development of the area, and the advantages that would be achieved from the development of the area in a coordinated manner and recommend specific principles for guiding the development of the area.[22]

Hence, decisions as to the designation of areas of critical state concern are made by the Governor and his Cabinet. The Division of State Planning recommends to the Governor and the Cabinet which portions of Florida are critical areas. Local planning offices may likewise make recommendations to the state planning agency. There is, then, a definite state role but with emphasis on local preparation and administration of regulations according to state guidance.

With respect to developments of more than local influence, the 1972 Florida Act states that the Governor and his Cabinet shall be advised by the state land planning agency as to developments thought to be of regional impact.[23] Pursuant to the Act, the Governor and his Cabinet shall then designate developments as having a regional impact after considering their effects upon the environment, transportation, the area's population, the size of the development, further growth which may be generated, and any unique characteristics of the area where the development occurs.[24]

As is typical throughout much of the nation, therefore, local governments in Florida were unable to solve their most pressing land use problems during the 1960's without assistance from the state capital. The state government responded by assuming a major planning role to provide local assistance through the Land and Water Management Act. Implementation of

this law, a principal responsibility of the Division of State Planning, appears reasonably effective over the last few years. But there have been problems in this approach, one of which has involved budgetary matters, again as in most states. For fiscal 1973-1974 the appropriation for the Division was some 30 to 40 percent below requests.[25] Future funding expectations from the legislature are more optimistic, however. Additional budgetary help is anticipated from the federal government, and Florida officials have outwardly supported a national land use bill. They also seem aware of specific provisions of other federal land use-related measures, although the state has received virtually no federal funds under these statutes, with the exception of 701 housing money.

Land use regulation in Colorado provides quite a different picture when compared to that in Hawaii and Florida. The State of Colorado is often mentioned among those in the United States most active and reform-minded in the land use control movement. Moreover, one would assume from its political leadership (including former Governor John Love), and from reading the Colorado Land Use Act of 1971,[26] that the state would have taken a forward-looking regulatory stance. But these indicators are deceiving. In practice the law has not been strictly implemented by governmental officials, and while Colorado may be ahead of some states in the "quiet revolution," its land use control activities have generally been less effective than in other states surveyed herein.[27]

Colorado's growing concern over the political issue of land utilization was widely publicized in November 1972, when the state's voters

rejected hosting the 1976 Winter Olympics.[28] Yet, prior to that time, the General Assembly had passed the Land Use Act of 1971. That law was enacted because the state had experienced a substantial influx of second-home residents and vacationers during the 1960's. They were accompanied by intensified development, particularly along the "Front Range" of the Rocky Mountains.[29] Reacting to this threat, the Colorado Land Use Act of 1971 enlarged the membership and increased the responsibilities of the state Land Use Commission. The Commission was explicitly given the "temporary emergency power"

> to develop, hold hearings upon, and submit to the general assembly a progress report by February 1, 1972, an interim plan by September 1, 1972, and a final land use planning program by December 1, 1973. All such submittals shall relate to a total land use planning program for the state of Colorado and shall include related implementation techniques, which may include but need not be limited to an environmental matrix, management matrix, growth monitoring system, and impact model. In developing the land use planning program, the commission shall utilize and recognize to the fullest extent possible, all existing uses, plans, policies, standards, and procedures affecting land use at the local, state, and federal levels and particularly note where, in its opinion, deficiencies exist. The land use planning program shall also specify development policy and procedures for the future.[30]

This appears a clear-cut assignment of authority, but the problem has been a lack of implementation in several respects.[31]

Other aspects of Colorado's approach to land management also deserve attention. The Commission, in designing the state's land use planning program, is directed to proceed with decentralized decision-making processes in mind. That is, it is to "recognize that the decision-making authority

as to the character and use of land shall be at the lowest level of government possible, consistent with the purposes of this article."[32] When it discovers that land developments constitute "a danger of irreparable injury, loss, or damage of serious and major proportions to the public health, welfare, or safety. . . ,"[33] the Land Use Commission is required to notify the board of county commissioners in counties involved. If the board of commissioners fails to respond adequately within a "reasonable time," the Commission may bring the land developments to the Governor's attention, who after a review may direct the Land Use Commission to issue a cease and desist order. If the Commission issues a cease and desist order, or if an injunction is issued by an appropriate court, it is the Commission's responsibility "immediately to establish the planning criteria necessary to eliminate or avoid such danger."[34] It might be thought that this cease and desist provision would give the law its teeth, yet in fact the power had not been invoked as of 1974.[35]

Broadly speaking, then, Colorado maintains a relatively weak approach to regulating land use from the state level. This does not appear the fault of Colorado law so much as its enforcement. The Colorado Land Use Act reads like a relatively strong measure for controlling usage of land, but in fact the state has not forcefully assumed this responsibility. Municipal and county governments continue to perform this function through zoning and subdivision regulations.[36] Other deficiencies relate to appropriations, for the activities of the State Division of Planning have been inadequately funded in the past. On the other hand, state officials seem

to feel that many of Colorado's land use problems would definitely be assisted by a national land use measure. Yet to date the state has received only nominal funds under federal land use-related programs, aside from 701 money.[37]

Another state taking a reformist stance in land use management is Vermont, particularly through its Land Use and Development Act of 1970.[38] This may appear politically ironic because this state is traditionally conservative and was led in 1970 by a Republican governor (Deane C. Davis) and a Republican legislature when it passed one of the most unprecedented land use regulation statutes in the nation. But, then, Vermont has customarily been a one-party Republican state,[39] and this statute simply illustrates the fact that land use is a nonpartisan issue in much of the nation. Vermonters, traditionally strong supporters of local control, opted for state action when local governments failed to resolve their problems in land usage. These problems are fundamental to an understanding of what otherwise seems in ways a political paradox.[40]

Aptly put by one writer, "in 1970 Vermont, hit by a second-home boom of alarming proportions, took the bit in its teeth and authorized a land-use plan governing the entire state."[41] Scenic Vermont, a recreational paradise for skiers and outdoorsmen, experienced during the 1960's an influx of persons with leisure time, mostly from the nearby Eastern megalopolis. Land prices soared because developers and speculators competed for Vermont's farming and rural areas. As Governor Thomas P. Salmon has observed, "By the late 1960's it had become all too evident that the State

was in the grip of new economic and social forces with which it was powerless to cope."[42]

Yet cope it did, for the response of the General Assembly was swift, decisive, and somewhat unique--but still compatible with the state's tradition of strong local governance. Rather than establishing a centralized system of land use regulation as in Hawaii, Vermont's law is founded on a decentralized permit system requiring high levels of citizen participation. According to Vermont's Director of Planning, Arthur Ristau, the state is essentially regulating growth first and will wait until later to plan. Stated otherwise, Vermont decided to "implement a permit system without a planning framework."[43]

This was accomplished through the Land Use and Development Act, popularly known as Act 250, which created an Environmental Board and originally divided the state into seven environmental districts, each overseen by a district environmental commission. The major purpose of the district environmental commissions is to manage Vermont's permit system which is based on a strict regulatory provision: "No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit."[44] The critical importance of citizen participation stems from the fact that laymen serve as the district environmental commission members. In the words of Governor Salmon, "In contrast to the approach taken by other States and the American Law Institute in its Model Land Development Code, Vermont relies most heavily not upon professional

input and administration but upon its tradition of citizen-centered government."[45] Hence, citizens throughout Vermont play decision-making roles as to land use, although rulings announced by district commissions may be appealed to the State Environmental Board. This general approach, as assessed in 1971 by one writer, "is the most effective existing attempt at bringing the state's police power to bear on the problem of improvident land-use."[46]

Development of Vermont's land use plan is also the responsibility of the State Environmental Board. An interim land capability and development plan was initially completed in mid-1971, describing land use at that time and assessing "in broad categories the capability of the land for development and use based on ecological considerations . . . ."[47] Then the Board created a Capability and Development Plan "with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state. . . ."[48] It is further authorized to adopt a final Land Use Plan.

Plainly, then, Vermont has established state authority for forward-looking land use regulation; the responsibility is starting to be accepted at both the state and local levels; Vermont's approach to land use planning and control seems to be working to the present point; and the permit system is generally restricting unwanted growth. However, points for improvement in this approach are apparent, too. A key problem in Vermont's efforts has been created, as in many other states, by insufficient funds for carrying out control responsibilities. The State Planning Office budget was

relatively low in 1973, and that figure was cut even further in 1974.[49] Chiefly because of these budgetary constraints Vermont planning officials generally support a national land use law, notwithstanding the fact that other federal legislation has failed to assist Vermont's program substantially and that citizens there strongly favor a local, participatory approach to controlling use of land.

Significant strides in land use regulation have likewise been made by political leaders in the neighboring State of Maine. Three state statutes constitute the principal measures used to control development there: the Site Location of Development Act of 1970, the Mandatory Zoning and Subdivision Control Act of 1971, and the 1969 law establishing the Maine Land Use Regulation Commission.[50] While all three of these statutes are essential in the Maine approach, the latter deserves special consideration here.

To guide land utilization in "unorganized" and "deorganized" areas, the state legislature established the Maine Land Use Regulation Commission in 1969. Prior to that Act, land use control in these regions was virtually nonexistent. As explained by Philip Savage, Maine's State Planning Director, there were no local governments in these areas, and political leaders were prompted to take action to control development, particularly that by large corporations.[51] Since 1969 the Maine law has provided a legal foundation for land use regulation in these undeveloped regions constituting half the land area of the state, 90 percent of which is private property.

The seven-member Maine Land Use Regulation Commission was authorized

to classify the state's "unorganized" and "deorganized" areas into protection, management or development districts.[52] Further, the Land Use Regulation Commission, "acting on principles of sound land use planning and development, shall prepare land use standards prescribing standards for the use of air, lands and waters."[53] Prior to deciding upon district boundaries and land utilization standards, the Commission was directed to "adopt and enforce interim land use standards for temporary districts whose boundaries shall be determined and delineated on interim land use maps."[54] And prior to their adoption, these proposed standards were required to be available for public inspection before commencement of public hearings. Then after district boundaries and standards were established, the Act stipulated that they were to be reviewed at five-year intervals. The Land Use Regulation Commission is also vested with the responsibility of reviewing and approving development in "unorganized" or "deorganized" areas,[55] and developing a comprehensive land use guidance plan to be adopted in early 1975.[56] This plan will serve as a Commission guide for deciding on land use standards and district boundaries in these "unorganized" and "deorganized" areas.

One therefore might well agree that "The State of Maine, at least in the area of State level land use legislation, is one of the leading states in the 'Quiet Revolution in Land Use Control.'"[57] But only the future can tell whether Maine will solve its problems, particularly since sufficient funds may not be forthcoming from the state legislature.[58] Another problem is that the Land Use Regulation Commission is essentially controlling

development attempts by a few major corporations, with a variety of time consuming law suits resulting. To make matters worse, federal land use legislation is failing to meet the state's need for assistance. Maine is to receive some federal funds under the Coastal Zone Management Act but has yet to receive assistance under the Rural Development Act. In view of this meager support, Maine planning officials generally favor passage of a national land use law.

Thus far land use law and politics have been surveyed in several states quite prominent in the swelling movement toward state control of land utilization. A salient feature of planning efforts in each of these states, and indeed in many others, is that their officials support passage of a national land use measure, particularly one designed to increase significantly the amount of funds regularly available to state and local governments for planning activities. Against this background, a few federal laws and one recent proposal are next examined in order to clarify what the national government has provided in the past, and what is likely to be provided in the near future if the land use control movement maintains its momentum.

CHAPTER 4

# LAND USE LAW AND POLITICS AT THE FEDERAL LEVEL

Chapter 2 explained that implicit in the Tenth Amendment of the United States Constitution is the police power of the states to protect the health, welfare, safety and morals of the public, and thus to regulate land use within their boundaries. This responsibility has traditionally been delegated to local governments, and as early as the 1920's many municipalities had adopted zoning plans pursuant to this power.[1] The United States Supreme Court subsequently upheld this local exercise of the state police power in the 1926 case of Village of Euclid v. Ambler Realty Company.[2] However, also as discussed in the second chapter, past zoning and related controls have proven all too often inadequate for broad-scale, coordinated land use planning purposes. And as emphasized in Chapter 3, many states have failed to respond to land use problems which city and county governments could not or did not solve. This largely explains why the federal government has gradually assumed an increasingly important role of passing basic legislation promoting better use of the land in order to protect the general welfare.[3]

This federal role is nothing new. Since the Civil War the national government has maintained an impact on state land use through land grants to finance railroads, the building of highways, and the establishment of agricultural experimental stations and land-grant colleges, for example.[4]

Following that, President Theodore Roosevelt instituted various conservation programs and enlarged national concern over the use of land. More recently this role has expanded through a proliferation of grants from the federal government to states, counties and cities to engage in comprehensive planning in numerous areas. Consequently, several federal agencies have become actively involved, including the Departments of Housing and Urban Development, Interior, Agriculture, Transportation, the Environmental Protection Agency, the Corps of Engineers and the Tennessee Valley Authority. Now in the 1970's, when environmental questions are of major federal concern, broader land use issues are hotly debated at the national level, and additional federal law seems inevitable. To be sure, the federal government's responsibility will be indirect; local and state governments will continue to bear the chief burden in controlling land utilization. But in the words of one study, "The fact that Federal responsibility is indirect . . .makes it no less necessary and important."[5]

At least sixty federal laws and programs instituted since World War II have affected land use.[6] These federal activities remain quite fragmented and inefficient, however, as a HUD report to Congress concluded in late 1974.[7] The theme here is an examination of a few more recent of these laws; this is not intended to be a comprehensive survey. A more thorough study would necessarily analyze additional legal and political developments both since and prior to 1970. It would of necessity examine the following important, illustrative statutes which affect the use of land: the Federal-Aid Highway Act of 1944,[8] the Omnibus Housing Act of 1954,[9] the Food and

Agriculture Act of 1962,[10] the Urban Mass Transportation Act of 1964,[11] the Demonstration Cities and Metropolitan Development Act of 1966,[12] the National Environmental Policy Act of 1969,[13] and the Airport and Airways Development Act of 1970.[14] But such a broad study could not be undertaken herein. Instead, the objective is to explore some recent federal measures relating to rural and coastal areas, suggesting that these fragmentary approaches could be integrated through national land use legislation similar to that defeated in Congress last year.

High density populations, uncontrolled urban growth, shortages in metropolitan housing and services, environmental pollution, transportation tie-ups and expansive suburbs surrounding large cities usually come to mind when one thinks of land management problems. Yet rural areas of the United States also experience profound land use-related problems. Rural water and sewer systems are generally less adequate than those in urban communities. Agriculturally-related water pollution is not uncommon. Transportation routes are poorly maintained in many instances, and alternative modes of transportation are frequently nonexistent. Over half of all substandard housing in the nation is found in rural America.[15]

Federal laws have been enacted to help alleviate these and other rural problems. Consider, for instance, the Rural Development Act as signed into law in 1972. It is a multifaceted statute designed to provide grants and loans to revitalize rural America. Of most importance here is Title III of the Act as it amended the Bankhead-Jones Farm Tenant Act of 1937,[16] which authorized and directed the Secretary of Agriculture to

"develop a program of land conservation and utilization in order thereby to correct maladjustments in land use. . . ."[17]

In order to effectuate this stated objective, the Rural Development Act amended the 1937 law to improve land use and water-related conditions and to facilitate the execution of land conservation plans.[18] For example, the Secretary of Agriculture was authorized "To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans. . . ."[19] Moreover, the 1972 amendments gave the Secretary the power "To provide, for the benefit of rural communities, technical and other assistance and such proportionate share of costs of installing measures and facilities for water quality management, for the control and abatement of agriculture-related pollution, for the disposal of solid wastes, and for the storage of water in reservoirs, farm ponds, or other impondments, together with necessary water withdrawal appurtenances, for rural fire protection . . ."[20]

While of limited scope, the Rural Development Act was thus designed to provide assistance for closely connected rural land use and water problems. According to the statute, this assistance takes the form of new loan and grant programs for nonmetropolitan areas, strengthened watershed protection, conservation and development programs, improved rural fire protection, rural development programs and research, and additional authority to the Department of Agriculture to improve life in rural areas.[21] But as is often the case, the discrepancy between what the law says and how it is implemented

is all too apparent, for funds have not been forthcoming under the Act for rural land use improvement, except on an occasional experimental basis.[22] By contrast, this shortcoming is less evident in major federal law designed to accomplish wise land usage in coastal areas.

Historically, the nation's coasts have been crucial for industrial, commercial and recreational purposes, but by the 1970's development and overcrowding in coastal areas was seriously threatening land and water resources. Conditions in coastal areas are often among the first to be recognized by lawmakers as constituting land management problems. In this connection, much of the support for unprecedented land use statutes in Florida, Hawaii and Maine was related to, or evolved from, concern over coastal conditions. Likewise, federal land use law now reflects the necessity of protecting and managing land use along the coasts. Congressional recognition of that threat is principally seen through the Coastal Zone Management Act of 1972.[23]

Political disagreements characterized consideration of this piece of coastal zone legislation from its inception. Originally President Richard Nixon supported coastal zone protection as part of a broader national land use management approach. Congress, on the other hand, leaned toward a separate coastal statute.[24] Interest groups representing the oil industry also feared that coastal legislation would regulate ocean drilling past the generally accepted three mile limit. Moreover, some local officials felt that the legislation would undermine their role in regulating land use in coastal areas. The National League of Cities-U.S. Conference of Mayors

thus supported a comprehensive national land use planning act rather than one specifically addressing the coastal zone.[25]

Although President Nixon did not veto this bill in 1972, for nearly three years after its passage dissention existed between the White House and Congress as to which federal agency should administer the new national coastal zone program. As before its enactment, Nixon favored administration by the Department of the Interior, while congressional leaders supported that job for the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. Led by Sens. Ernest F. Hollings (D-S.C.) and Warren G. Magnuson (D-Wash.), the Congress finally won the dispute in October 1973, largely because the administration feared the struggle would endanger passage of needed energy legislation.[26] After the Office of Management and Budget declined for some time to fund NOAA's coastal zone activities, in 1974 the statute finally became the source of over $7 million in grants distributed among twenty-nine eligible states.[27]

The Act declares the nation's policy to be as follows:

> (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations. (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development. (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the

> development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.28

A state "management program" is specified by the Act to include "but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communications, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone."[29] The Secretary of Commerce is assigned the role of authorizing management development program grants for eligible states.[30] To qualify for these matching grants, state management programs are required to contain several elements: an identification of the specific area coming under the management program; a definition of what constitutes permissible uses of land and water within the zone and how the state would control those uses; an inventory and specification of areas of "particular concern" within the zone; general land and water use priorities within particular coastal zone areas; and a description of local, regional, state and interstate responsibilities and organizational structures within the zone having the responsibility for implementing program management.[31]

There is also authorization for state administrative grants under the Coastal Zone Management Act, in addition to management development program grants. Up to two-thirds of state costs for administering its management program may be covered by these grants.[32] For states to qualify for

administrative grants, the Secretary of Commerce must make several determinations. The state must have a program of coastal management meeting the guidelines of the Secretary. Its coastal zone management program must be coordinated with local, regional and interstate plans within that portion of the coastal zone. There is the requirement for an "effective mechanism" for continuing such coordination. Public hearings must be held within the state concerning the management program to be created. Its program is to be reviewed and approved by the state's Governor, who must have "designated a single agency to receive and administer the grants." And the state is required to have adequate organization and authorities to implement coastal zone management programs.[33] Furthermore, to establish eligibility state law must authorize such a management program,[34] acceptably provide "general techniques for control of land and water uses within the coastal zone,"[35] and "not unreasonably restrict or exclude land and water uses of regional benefit."[36]

Intergovernmental cooperation and coordination is promoted by the Coastal Zone Act not only among state, regional and local governmental units, but also between state coastal zone programs and "interested" federal agencies. The Secretary of Commerce is directed to "consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies."[37] Where "serious" disagreements occur between state and federal agencies in coastal zone management programs, the Secretary--cooperating with the Executive Office of the President--functions as a mediator.[38] On the other hand, federal

projects or activities which affect coastal zones are to be "to the maximum extent practicable, consistent with approved state management programs."[39]

While encouraging intergovernmental cooperation, then, the Coastal Zone Management Act also assists the states in developing and implementing land use control programs in coastal regions. Pursuant to these objectives, states may secure federal grants-in-aid so long as they meet certain minimal requirements for coastal management programs. Some of these same activities would have been expanded into non-coastal areas if a measure recently before the Congress had become law. This of course was the national land use proposal, the defeat of which was alluded to earlier.[40] While temporarily defeated, this measure remains exceedingly important because it is the most comprehensive piece of national land use legislation ever seriously considered, and because its sponsors have vowed to reintroduce it for passage.[41]

Federal statutes discussed thus far are significant but are relatively narrow when contrasted to the Land Use Policy and Planning Assistance bill, S. 268.[42] That proposal, which in slightly different forms has been under consideration in Congress for four years, was intended to function as an "umbrella measure" by establishing nationwide land use planning processes and programs.[43] Political considerations contributing to its defeat were discussed in Chapter 2; its implications for the future are assessed in Chapter 5. Here its specific provisions are examined.

Since they are very likely to reappear in legislation introduced in

this session of Congress, and because of their potential impacts, the stated purposes of the Land Use Policy and Planning Assistance Act deserve first attention. They were to:

> (1) encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land use programs;
>
> (2) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the personnel, collect and analyze the data, and establish the institutions and procedures necessary to develop and implement State land use programs;
>
> (3) establish a grant-in-aid program to encourage cooperation among the States concerning land use planning and management in interstate regions;
>
> (4) establish a grant-in-aid program to assist Indian tribes to develop land use programs for reservation and other tribal lands and to coordinate such programs with the planning and management of Federal and non-Federal lands adjacent to reservation and other tribal lands;
>
> (5) establish the authority and responsibility of the Executive Office of the President to issue guidelines to implement this Act and of the Secretary of the Interior to administer the grant-in-aid and other programs established under this Act, to review, with the heads of other Federal agencies, statewide land use planning processes and State land use programs for conformity to the provisions of this Act, and to assist in the coordination of activities of Federal agencies with State land use programs;
>
> (6) develop and maintain sound policies and coordination procedures with respect to federally conducted and federally assisted projects on non-Federal lands having land use implications;
>
> (7) facilitate increased coordination in the administration of Federal programs and in planning and management of Federal lands and adjacent non-Federal lands;

(8) provide for meaningful participation of property owners, users of the land, and the public in land use planning and management;

(9) provide for research on the training in land use planning and management;

(10) promote the development of systematic methods for the exchange of data and information pertinent to land use decisionmaking among all levels of government and the public; and

(11) study the feasibility and possible substance of national land use policies which might be enacted by Congress.[44]

Underlying these objectives was a feature of S. 268 which requires emphasis. In order to remain eligible for grants, states were particularly cautioned to take heed of four important areas where the impact of land use extends beyond "local concern." These were "areas of critical environmental concern,"[45] "key facilities,"[46] "large scale development,"[47] and "land sales or development projects."[48]

Development and implementation of state land use planning processes and programs were concepts basic to the Senate's measure. States would have been eligible for three years for grants to develop statewide land use planning processes. In order to remain qualified for federal monies after the three-year period, each state's planning process was required to be adequately developed in a number of areas.[49] Broadly speaking, these included the inventorying of (1) the state's land; (2) natural resources; (3) environmental, physical and geological conditions; (4) use of federal lands for state, local and private needs; and (5) public and private institutional and financial resources. Beyond that, the bill provided for

"projections of the nature, quantity, and compatibility of land needed and suitable for" numerous land use considerations--environment, conservation, agriculture, industry, commerce, recreation, transportation, housing, solid waste management, urban and rural development, and health, educational and scientific activities.

As conditions to qualify for land use program funds after five years, S. 268 stipulated that state land use programs were to include a suitable land use planning process as discussed above, and a statement of objectives and policies for land use within the state.[50] Aside from that, in order to retain eligibility the state program had to implement S. 268 by providing methods for securing several objectives. It had to control land utilization in areas of critical environmental concern and in areas that are or may be impacted by key facilities. It had to assure that public facility developments of regional benefit were not capriciously restricted by local regulations, and that neither state nor local programs are inconsistent with the land use program of the state. It had to provide for timely revision of the state's program for land use, with participation in the revision process by local officials, the public, land users and property owners. It had to coordinate the state's land use activities under S. 268 with land use management programs under the Coastal Zone Management Act. And it had to influence the location of new community developments, control proposed large-scale developments which would have more than local environmental impacts, and assure that federal environmental legislation would not be violated by the location of new communities or large-scale developments.[51]

The bill further declared that these methods of implementation should, "wherever possible," encourage local government's role in controlling land utilization.[52] During political debate over the measure, this and related provisions were commonly overlooked or disregarded by its opponents, as was the spirit of the legislation.

To provide for land use programs of an interstate nature, the proposal included grants for interstate programs to assist in coordination, research, planning and implementation of policy. These functions could have been approached either through existing interstate entities or through new interstate compacts, with the consent of Congress.[53] But in either instance, "such entities or compacts shall provide for an opportunity for participation for coordination purposes of Federal and local governments and agencies as well as property owners, users of the land, and the public."[54] Meanwhile, the Advisory Commission on Intergovernmental Relations was assigned the task of reviewing and recommending revisions in existing interstate agencies so as to improve land use in interstate areas.

Apart from all this, in its 1974 form the bill would have created a new office in the Department of the Interior--the Office of Land Use Policy Administration--to administer programs. Through this office the Interior Secretary would have performed several functions. One involved the study and analysis, on a continuing basis, of the nation's land and its management, and of state and local governmental methods employed for implementing the bill. Another provided that, through this Office, the Secretary would "cooperate with the States in the development of standard methods of

classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data."[55] Development and maintenance of a so-called Federal Land Use Information and Data Center would also be a responsibility of the Secretary. The Center, which was an innovative idea, would have had regional branches to disseminate information, land use plans, statistical data on land usage of more than local significance, and studies on data acquisition, analysis and evaluation.[56] However innovative this idea, it nevertheless died when the bill failed to pass the House during the 93d Congress.

These provisions of the Land Use Policy and Planning Assistance measure were quite progressive, and proponents of the bill were understandably discouraged by its narrow defeat.[57] They have promised that it will nevertheless be reintroduced and passed in an upcoming session of Congress.[58] Some impacts of this and other current and future developments in land use law and politics are next examined.

# CHAPTER 5

## SOME THOUGHTS ON THE PRESENT AND FUTURE

At least three fundamental premises underlie this discussion of present and future land use regulation in the United States. One is that comprehensive, direct state control cannot reasonably be expected in most states in the near future, given the traditional local planning role. But it is nevertheless important for states to accept the responsibility for coping with major land use problems when those problems are of broader scope than a particular locality, or when a community has proven it cannot deal with its major problems in land usage. Second, the future federal role should be one of leadership and direction. Yet due to the differences in land use conditions throughout the nation, and because of widely varying political cultures and legal structures, sub-national governmental units should be afforded as much discretion as possible to develop planning processes and programs most acceptable to citizens in those localities. Third, the question is not whether growth, a basic aspect of the land use picture, is bad or threatening. Rather, in the words of Robert C. Weaver, "What is menacing is the form growth may take and what it often does to our living and working patterns."[1]

Against this background, some current features of American land use control seem obvious, while other developments appear likely for the future. As to the present, Fred Bosselman and David Callies, leading authorities on land use, correctly characterized changes in state land use control as of

1971 as constituting a "quiet revolution."[2] Four years later changes are even more profoundly revolutionary in some states, but they are now far from quiet. Indeed, land use politics and law at the local, state and federal levels currently receive significantly more governmental and public attention, and are truly at a stage of transition, frequently stimulating hot debate. Beyond that, land use law in the states will probably continue to change rapidly as a result of federal statutory initiatives to improve land usage. Yet although many state legislatures have considered more stringent land use legislation, as of early 1975 most have not passed comprehensive, statewide land use control measures.

Land use will continue to be a significant issue closely related to other key national problems. As an example, urban sprawl is temporarily being curtailed by three overriding ailments of the American economy: inflation, recession and the energy shortage. While President Ford and other leaders wrestle with the economic dilemma, the building trades are suffering severely from depressed sales. Young citizens are often unable to purchase their first homes because of spiraling living expenses, higher costs of housing and gasoline for transportation, and the difficulty of obtaining mortgages, even at high interest rates. The situation is not substantially better for middle-aged and senior citizens, for they typically suffer financial losses when selling homes to purchase new ones. Second-home land sales have decreased considerably because of these factors, and new urban sprawl problems have been avoided.[3] In the long-run, however, the nation cannot depend on such economic conditions to curtail the

proliferation of development surrounding urban centers. Positive and forceful governmental action is instead required.

Another obvious point is that federal land use programs to date have been fragmented and certain partial solutions to land use-related problems, such as the small towns program of the 1970's, have largely been failures.[4] In order for federal planning assistance to be truly effective, the following changes recently recommended by the Department of Housing and Urban Development seem necessary: "(1) simplifying the basic requirements among as many programs as possible; (2) providing increased flexibility and adequate planning assistance to state and local governments to allow them greater discretion in planning to meet locally determined needs and objectives; (3) modifying or terminating programs whose original purposes have been satisfied; and (4) achieving better coordination in the delivery and use of Federal planning assistance."[5]

Yet another future development will be that, regardless of whether the above steps are taken at the federal level, some states--including Hawaii, Florida, Vermont and Maine--will be better prepared than others to deal with land use problems. This should facilitate a reasonably effective and able response to objectives of federal land use legislation in coming years. In other states this is less liklely, though, and questions of eligibility for federal grants and assistance will be of import as these states attempt to meet minimum requirements for planning processes and programs. States unable to meet these requirements will of course be ineligible for federal funds. This should stimulate new state legislation.

In this connection, some new state legislation undoubtedly would have been prompted by the enactment of the National Land Use Policy and Planning Assistance measure of 1974.[6] One should remember, however, that that particular bill would not have required state action. It provided no national planning policy in the strict sense and few specific requirements for state planning programs. Instead, relatively broad guidelines for state planning processes and programs were stated, with particular emphasis on four distinct matters: areas of critical environmental concern, key facilities, large-scale development, and land sales or development projects. Sanctions against states failing to develop and implement land use plans were removed from original Senate and House versions of the bill, and it clearly recognized that planning flexibility at the local and state levels is a necessary feature of any federal legislation.

Assuming that a law similar to S. 268 is passed in the near future,[7] two conclusions seem warranted. First of all, such a law should neither overly restrict state options nor force them to reject their own peculiar planning traditions based on local control. This is nothing new, for federal law pertaining to land use has traditionally encouraged states to cooperate with federal programs through grants and other inducements, not by attempting to enforce rigid federal guidelines. However, in the second place, it is far from certain how many states will design and adopt land management programs with stringent controls in major problem-areas. If they fail to do so, not only will the nation continue to experience the past ad hoc approach of local planning, but additional political and legal

questions will quickly move to the forefront. These may involve competing "liberal" values, such as the need to maintain a high quality environment while avoiding the infringement of individual constitutional rights.

An example of a threshold question is the extent to which localities may limit growth without infringing upon the constitutionally guaranteed freedom of movement.[8] Attempting to place limits on continued development are cities throughout the nation, some of which have attracted much attention: Boca Raton, Florida; Boulder, Colorado; Rampo and Ithaca, New York; Fairfax, Virginia; Boise, Idaho.[9] Another, Petaluma, California, has received much publicity because of this issue and a subsequent federal court decision. A 1972 Petaluma ordinance was passed to restrict annual housing construction to 500 new units each year through 1977. Located a short drive from San Francisco, the town was endeavoring to prohibit escalating development which had doubled its population in a decade. In litigation challenging the ordinance, the United States District Court in San Francisco ruled that Petaluma's approach was unconstitutional because it violated the right to travel. Judge Lloyd H. Burke explained the issue and his decision in the following way:

> The Supreme Court has made it clear that the freedom to travel, which includes the right to enter and live in any State or municipality in the Union, has long been recognized as a basic right under the Constitution, or a "fundamental right." . . .
>
> The "Petaluma Plan" is an effort to avoid the problems that accompany contemporary trends in population growth. Through the plan, the defendants propose to address themselves to such problems by limiting the number of people who will henceforth be permitted to move into the city. The express purpose

> and the intended and actual effects of the "Petaluma Plan" have been to exclude substantial numbers of people who would otherwise have elected to immigrate into the city.
>
> The plaintiffs do not challenge the legitimacy of the defendants' desire to deal with the problems of population growth but contend that the means which they have employed to accomplish their ends fall far short of constitutional validity. In essence, the plaintiffs contend that the question of where a person should live is one within the exclusive realm of that individual's prerogative, not within the decision-making power of any governmental unit. Since Petaluma has assumed the power to make such decisions on the individual's behalf, it is contended that the city has violated the people's right to travel. Considering the facts of the case, we agree.[10]

Ordinances like the one of Petaluma are normally upheld where it is shown that public services, such as water and sewage, are not available to support new construction. In the Petaluma case, however, this was not demonstrated. The city council had instead simply passed an ordinance placing a limit on further housing growth, based upon the results of public hearings and a questionnaire distributed to residents. The Petaluma ruling is likely to have a truly major impact on municipal growth restrictions throughout the nation if it stands as precedent.[11]

With all of the above considerations in mind, it seems safe to say that the United States during the latter half of the 1970's will almost certainly experience a narrowing of the extremes in land use controls. Far more state and local governments will adopt more stringent guidelines for development; few, if any, will continue to ignore land utilization issues, their impact upon everyday life, and their effect on future generations. This point was illustrated in Chapter 3 with regard to Hawaii, Vermont,

Maine, Florida, and to a lesser extent Colorado--all of which have imposed key legal controls on land usage. These are not politically "liberal" states which needlessly experiment with entirely new approaches to social, economic and legal problems. Controls were instead required in those states by common pressing conditions during the 1960's and early 1970's. All five states serve as recreational and vacation attractions, a fact which spurred extensive development and which required legal control. Three of these are coastal states, and coastal problems alerted legislators to statewide land use needs. And, for the most part, each state has accomplished similar results--more coordination in the use of the land. It is nonetheless hazardous to generalize about these states, for their land use laws and regulatory programs are profoundly different, and because of varying degrees of implementation of statutory provisions. In Hawaii land management is relatively centralized; in Vermont it is administratively decentralized. In Colorado the old land use commission was simply reorganized and assigned additional responsibilities; in Maine an entirely new land use regulation commission was created. In Vermont inadequate funds have usually been appropriated to the State Planning Office for carrying out its responsibilities; in Florida funding problems seem less critical, by and large. In Maine the power to regulate land use is derived from several statutes; in Hawaii most regulatory power stems from one law.

Political friction will occur in some instances between state legislatures asserting their police powers in major questions and local officials who have customarily exercised those delegated powers. There are

exceptions to this rule, however. In Vermont local leaders actually went to Montpelier and requested state intervention because they were unable to control growth effectively through their normal zoning and planning activities. But Arthur Ristau, a member of the Council of State Governments Task Force on Land Use, says that the local climate in most states is opposed to ceding this authority.[12] Philip Schmuck, Director of Colorado's Division of Planning, agrees but feels that this general reassertion is gradually taking place in much of the nation.[13] From his standpoint, this process will first be characterized by additional planning power at the regional level, with state reassertion evolving over several years. Likewise, Earl Starnes of the Florida Division of State Planning expressed the view that substate planning districts will play more influential roles in coming years.[14]

Other future developments in intergovernmental relations deserve particular attention. Some of the earliest federal-state-local cooperative programs in this country involved land use,[15] and intergovernmental relations will similarly be important in future land use control activities. Regulation of land usage will increasingly become a concern of all levels of government, not just city and county governing bodies. The simple fact that S. 268 land use management guidelines would affect more levels of government than normal suggests likely developments in this respect. S. 268 involved not only federal, state, regional and local units, but also ad hoc boards, such as the Interagency Advisory Board on Land Use Policy.[16] Lance Marston, Director of the Office of Land Use and Water Planning of

the Department of the Interior, had this thought in mind when commenting on an earlier version of the Land Use Policy and Planning Assistance Act: "Every government of any consequence will be potentially involved in the administration of the program. . . . When you begin to stack all these up you realize that you've got an enormous pyramid to deal with."[17]

Again consider the basic features of the system. Land use regulation in this nation, at present, is "a thoroughly decentralized matter."[18] As the federal system now works, states are constitutionally given the police power, which includes the responsibility to regulate land utilization within their boundaries. This power has been delegated to local governments, and they are directly responsible for zoning, official maps and subdivision regulation. In comparison, the federal government does not "plan" the use of private property, although it can significantly influence the use of land through housing, transportation, coastal zone and rural development legislation, for example. Intergovernmental efforts in land management have been limited because the states have not asserted their powers in vital problems, local governments have planned on an independent basis, and the federal government is only now on the verge of directly encouraging and coordinating planning processes and programs.[19]

Robert C. Wood has correctly observed that "land interest groups prefer a highly decentralized organization which assures them of many places of access and a strong voice in policy matters."[20] But despite the preferences of powerful pressure groups, some alteration in the present arrangement of powers, relations and practices seems inevitable. And federal

forms of government maintain mechanisms for adapting to such changing societal needs.[21] Thus, now in 1975 it is not surprising that governmental influence over land utilization in the American federal system substantially differs from what might have been forecasted in 1787, or even a generation ago.

It is also in this sense that intergovernmental relations and the distribution of power among local, state and federal governments in land use control presents an interesting case study in the adaptability of American democracy. The Land Use Policy and Planning Assistance proposal once more serves to point up the issues involved, for it would have provided planning grants to the states, encouraged cooperation in planning for interstate regions, and coordinated land use for federal and adjacent non-federal lands. For three years proposals similar to S. 268 were supported by the Senate's Committee on Interior and Insular Affairs, but they failed to become law partly because they stimulated political debate relating to their implications on American federalism.[22] The legislative history of S. 268 highlights this debate.

On the one hand, according to its advocates, the measure was not really a "national land use policy" but, instead, a reassertion of states' rights. They said that S. 268 would minimize federal strings attached to monies and assistance, allowing states to decide whether to adopt direct planning programs or, more likely, to encourage local governments to implement planning activities under broad state guidelines. Advocates insisted that the proposal was consistent with the nation's tradition of

state and local land management as derived from the states' police powers; the federal government would only be given an indirect influence in land use of more than purely local impact. In the words of Senator Jackson, a principal sponsor of the measure:

> the act does not contemplate sweeping changes in the traditional responsibility of local government for land-use management. Decisions of local concern will continue to be made by local government. However, for land-use decisions which would have significant impacts beyond the jurisdiction of the local public or private decisionmakers, the act provides for wider public participation and review by the State, as representative of the large constituency affected by those decisions.[23]

On the other hand, according to its opponents, S. 268 was overly broad, giving the federal government potentially too much influence in land use planning at the state level. This view was candidly expressed by Senator James L. Buckley (Cons.-N.Y.). According to him, "in spite of the language of the report, and in spite of the language in the bill,there is concern over the potential for naked Federal intervention into areas of authority that the Constitution reserves to the States, a potential which is deemed real because of the possibilities for bureaucratic harassment that many consider inherent in the present bill."[24] Similar assessments were offered by lobbyists against the bill. A representative of the U.S. Chamber of Commerce reportedly interpreted the proposal as allowing the federal government to dictate "in detail how the state governments should restrict use of land within their boundaries and unconstitutionally prevent some landowners from developing their property at all. 'That's not what federal legislation should do,'" the lobbyist observed.[25]

To be sure, these positions of proponents and opponents involve fundamental questions of federal-state-local relationships, questions that the nation's leaders have debated for over two hundred years.[26] What activities should states and localities directly and entirely regulate? In which should the federal government wield some influence, although such a role is not definitely spelled out in the Constitution? How may state and local governments maintain their place in the constitutional scheme of things when individuals and groups must frequently appeal to the federal government to respond to unanswered needs? More specifically, will the role of the federal government in land use management, as in other environmental areas, alter any present characteristics of the American federal system? Or will states increasingly assume leading regulatory roles in major land use problems, as opposed to delegating the entire responsibility to local governments or depending on federal authorities for leadership and funds?

Changes in the federal system will emerge depending on the specific answers to these questions. In the view of one environmental scholar, "This subtle shift of roles among federal, state, and local governments may be molding a new partnership for public action to protect the environment."[27] Or in the words of Secretary of the Interior Rogers C. B. Morton, national land use legislation is an "integral part" of the nation's attempt at a "New Federalism."[28] Morton believes that a national land use policy will promote decentralization by enhancing the position of the states in American federalism. Whatever the exact traits of such a "new partnership" or "New

Federalism," a plausible proposition is that local governments will not play a dominant role in major future land use regulation questions and that state governments will be apt to assume more regulatory responsibilities. The federal government will play a more noticeable role in leadership and direction. In short, passage of a national land use law, in combination with changes in state law, will amount to alterations in the traditional workings of American federalism pertaining to land use control. But more than anything else it will demonstrate that in yet another sense the American federal system is one of shared functions.[29]

# REFERENCES

## CHAPTER 1 (Pages 1-4)


1. See, e.g., Jack Anderson, "Land Abuse," Washington Post, January 12, 1975, p. B-7, col. 1.

2. U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, S. Rept. 93-197 to accompany S. 268, 93d Cong., 1st sess., 1973, p. 36.

3. Congressional Record-Senate, January 9, 1973, reprinted in U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, Hearings, 93d Cong., 1st sess., 1973, p. 59. For other general discussions of growth-related problems see Charles R. Adrian and Charles Press, Governing Urban America (4th ed. 1972); Daniel R. Mandelker, Managing Our Urban Environment: Cases, Text & Problems, (2d ed. 1971); John C. Bollens and Henry J. Schmandt, The Metropolis: Its People, Politics, and Economic Life (2d ed. 1970).

4. See generally, Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (1971); Stephen Suloway, ed., "A Summary of State Land Use Controls," (Washington, D.C.: Land Use Planning Reports, 1973); Anthony James Catanese, "Reflections on State Planning Evaluation," in State Planning Issues (Richard H. Slavin and H. Milton Patton eds. 1973). Legislation in five of these states is analyzed at infra, ch. 3.

5. See "Lamm: A Compass in His Head," Time, November 18, 1974, p. 12.

6. See infra, ch. 4, pp. 36-41.

7. See, e.g., George C. Wilson, "Environmentalists Claim 8 Wins in Battles Against 'Dirty Dozen,'" Washington Post, November 7, 1974, p. A-6, col. 4.

8. See the discussion of Mr. Steiger's role in the defeat of the 1974 federal land use proposal at infra, ch. 2, pp. 10-11.

9. "Excerpts from Text of State of the Union Message to Congress by the President," New York Times, January 31, 1974, p. C-20, col. 5.

10. See, e.g., "Land Use and Laundry Lists," Washington Post, December 24, 1974, A-10, col. 1; Land Use Planning Reports, Vol. 2, No. 31, September 16, 1974, p. 1; Land and the Environment, Vol. 2, No. 18, September 20, 1974. Note, however, that President Ford recently vetoed related and much needed federal strip mining legislation. In explaining his failure to act on the bill, "the President said it would curtail coal production at a time it is vitally needed. The bill also would require 'excessive federal expenditures and would clearly have an inflationary impact on the economy,' he said." Quoted in Carroll Kilpatrick, "Strip Mine, Ship Bills Are Vetoed," Washington Post, December 31, 1974, A-1, col. 8 at A-5, col. 4.

11. See "Ford: I Must Say . . . That the State of the Union Is Not Good," Washington Post, January 16, 1975, p. A-9, col. 1; Land and the Environment, January 24, 1975, Vol. 3, No. 2, p. 10.

12. For a presentation of citizen demands for land use reform throughout much of the nation, see William K. Reilly, ed., The Use of Land: A Citizens' Guide to Urban Growth (1973).

CHAPTER 2 (Pages 5-12)

1. Since the 1920's, such local regulation of the use of private property has invoked resistance and feelings that constitutionally protected property rights were being violated. See Fred P. Bosselman and David Callies, The Taking Issue (1973).

2. To a lesser extent there also exists a history of zoning in rural areas of the United States. See Lane W. Lancaster, Government in Rural America (1952), pp. 21-22.

3. David Easton, The Political System (1960), p. 129.

4. Alan C. Altshuler, The City Planning Process: A Political Analysis (1965), pp. 4-5.

5. Jack Anderson, "Land Abuse," Washington Post, January 12, 1975, p. B-7, col. 1.

6. This discussion is based on Hugh L. LeBlanc and D. Trudeau Allensworth, The Politics of States and Urban Communities (1971), pp. 281-83.

7. Ibid., p. 282.

8. Altshuler, supra note 4, pp. 5-6.

9. By way of introduction, see the politics of land use decision-making in Robert C. Fellmeth, Politics of Land (1973), esp. ch. 12; Altshuler, supra note 4, chs. 1-4. For a contrasting view, see Robert Linowes and Don T. Allensworth, The Politics of Land Use: Planning, Zoning, and the Private Developer (1973).

10. See generally, Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (1971); John M. DeGrove, "Land Use Planning: State and Local Roles," 63 National Civic Review 72 (1974); Fred Bosselman, "The Right to Move, the Need to Grow," Planning, Vol. 39, No. 8, September, 1973, p. 8; William K. Reilly, ed., The Use of Land: A Citizens' Policy Guide to Urban Growth (1973).

11. Debate over planning at the national level dates far back in American history but was particularly evident during the 1930's when various federal planning agencies were established to cope with economic problems. For opposing philosophical views on national planning, see Frederic A. Hayek, Road to Serfdom (1944) and Herman Finer, Road to Reaction (1946).

12. See U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93d Congress: An Analysis of Legislative Proposals and State Laws, 93d Cong., 1st sess., 1973, pp. 23-37.

13. All references hereinafter to the Land Use Policy and Planning Assistance proposal of 1973 are taken from the bill as passed by the Senate. See Congressional Record-Senate, June 21, 1973, pp. 11663-11672.

14. The following account is based generally upon Land Use Planning Reports, November 1973 through July 1974; Land and the Environment, January through July 1974.

15. See Public Papers of the Presidents of the United States: Richard M. Nixon (1972), p. 134.

16. See David S. Broder, "Land Use Bill Is Killed In House Unit," Washington Post, February 27, 1974, p. A-1, col. 2; Leonard Downie, Jr., "The Ambush of the Land Bill," Washington Post, March 10, 1974, p. B-3, col. 1.

17. This listing is part of that appearing in Land Use Planning Reports, Vol. 2, No. 11, April 22, 1974, p. 2.

18. Land Use Planning Reports, Vol. 2, No. 12, April 29, 1974, p. 1.

19. Voting for the bill were 158 Democrats and 46 Republicans. Against it were 75 Democrats and 136 Republicans. Representative Udall described the vote in the following terms:

> The ideological division was a strange one. The chief opponents were the very conservative wing of the Republican Party.
>
> The other group was the rural Democrats. The heat they were getting was very genuine. They would go home and find their Chamber of Commerce, their timber people, their social conservation people and farmers against it.

Quoted in Mary Russell, "Land Use Bill Is Killed By 211-204 House Vote," Washington Post, June 12, 1974, p. A-2, col. 6.

20. Ibid. Also see Mary Russell, "House Rejection of Land Use Bill Stirs Charges of 'Scare Tactics,'" Washington Post, June 13, 1974, p. A-2, col. 3; Land Use Planning Reports, Vol. 2, No. 19, June 17, 1974, pp. 1-3.

CHAPTER 3 (Pages 13-27)

1. Robert A. Dahl, Pluralist Democracy in the United States: Conflict and Consent (1967), p. 171.

2. For discussions of state land use and planning law during the 1960's and the early 1970's, see Council of State Governments, The Land Use Puzzle (1974); Richard F. Babcock and Fred P. Bosselman, Exclusionary Zoning: Land Use Regulation and Housing in the 1970's (1973) ch. 11; Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (1971); Note, "State Land Use Regulation--A Survey of Recent Legislative Approaches," 56 Minn. L. Rev. 869 (1972); "Recent Trends in State Planning Legislation: A Selective Survey," 16 Buffalo L. Rev. 801 (1967); Donald G. Hagman, Urban Planning and Land Development Control Law (1971), pp. 33-35.

3. Anthony James Catanese, "Reflections on State Planning Evaluation," in Richard H. Slavin and H. Milton Patton, eds., State Planning Issues (1973), p. 27. Catanese also rates the fifty states according to "functional planning coordination," "regional planning coordination and resource allocation," "regional and local technical assistance," "planning information systems," "capital and operating budget coordination," "applied planning research," and "planning stimulation and support."

4. Stephen Suloway, ed., "A Summary of State Land Use Controls," (Washington, D.C.: Land Use Planning Reports, 1973), pp. 28-29.

5. See Bosselman and Callies, supra note 2, pp. 5-7. For a discussion of Hawaii's political heritage see Norman Meller and David W. Tuttle, Jr., "Hawaii: The Aloha State," ch. 6 in Western Politics (F. H. Jonas ed. 1961).

6. Hawaii Rev. Statutes §205 (Supp. 1972). The statute was amended in 1963, 1965, 1969, 1970, and 1972. Some suggest that future legislative sessions will pass an even stricter land use law.

See Shelley M. Mark, "It All Began in Hawaii," 46 State Government 188, 195 (1973). For related statutes see Hawaii Rev. Statutes §§201, 206, and 223.

7. Hawaii Rev. Statutes §205-2.

8. According to some, the Hawaiian approach "is an indication of the general trend in land use control." Robert Bruce Evans, "Regional Land Use Control: The Stepping Stone Concept," 22 Baylor L. Rev. 1 (1970).

9. James Nathan Miller, "Hawaii's 'Quiet Revolution' Hits the Mainland," 62 National Civic Review 415 (1973). For a more detailed statement of this concept, see Bosselman and Callies, supra note 2, pp. 314-18.

10. Information in this paragraph is generally based on interviews with Shelley M. Mark, Director of the Hawaii Department of Planning and Economic Development, Honolulu, Hawaii, March 25, 1974; and Tats Fujimoto, Executive Officer of the Hawaii Land Use Commission, Honolulu, Hawaii, March 23, 1974.

11. See Mark, supra note 6, p. 191. For a recent example see William Shawcross, "Hawaii's 'Garden Island' Resisting Growth," Washington Post, January 12, 1975, p. B-3, col. 1. Nevertheless, under its responsibility to review thoroughly land use district boundaries every five years, the Commission reclassified a considerable amount of land in 1969. See Bosselman and Callies, supra note 2, p. 10. See also David Meckler, "Hawaii Had a Good Idea . . . But It Failed," Planning, Vol. 39, No. 8, September,1973, p. 20.

12. See Hawaii Rev. Statutes §205-6.

13. See Shelley M. Mark, "Hawaii Land Use Planning and Control,"HUD Challenge, October, 1973, p. 8; Bosselman and Callies, supra note 2, pp. 11-34, passim; Meckler, supra note 11.

14. P.L. 92-419, discussed at infra, ch. 4, pp. 30-32.

15. 16 U.S.C. 1434-1964, discussed at infra pp. 32-36.

16. See P.L. 83-560 (1954).

17. See Phyllis Myers, Slow Start in Paradise (1974), pp. 11-13; William K. Reilly, ed., The Use of the Land: A Citizen's Guide to Urban Growth (1973), pp. 63-64. Since Florida has traditionally been one of the most urbanized Southern states, it is logical to think that change would appear there before it would in neighboring states. As V. O. Key noted over twenty years ago, "Florida's urbanization undoubtedly conditions its politics and contributes to its political differentiation from the South generally." V.O. Key, Southern Politics in State and Nation (1949), p. 84.

18. 369 U.S. 186 (1962).

19. This is a striking example of a land use-related crisis being directly responsible for overcoming political inertia. South Florida's water supply became partially depleted due to drought conditions in the late 1960's; this was accompanied by subsequent grassland fires covering seven million acres. Fresh water for personal, business and industrial use was in short supply. Furthermore, the Miami area was periodically beleaguered by smoke and burning grasslands, creating health and transportation hazards. This situation produced not only an awareness of inadequate water management but, also, the recognition "that a water management system could not be effectively implemented until the use of the land was more adequately controlled." Richard G. Rubino, "An Evaluation: Florida's Land Use Law," 46 State Government 173 (1973).

20. Fla. Stat. Ann. §380 (Supp. 1972). Additionally, the legislature passed the Florida Land Conservation Act of 1972, Fla. Stat. Ann. §259.01; the Florida State Comprehensive Planning Act of 1972, Fla. Stat. Ann. §23.011; and the Florida Water Resources Act of 1972, Fla. Stat. Ann. §373.013. Each was passed by a largely nonpartisan vote.

21. See U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93d Congress: An Analysis of Legislative Proposals and State Laws, 93d Cong., 1st sess., 1973, pp. 372-479 (prepared by the Environmental Policy Division, Congressional Research Service, Library of Congress). Also see David G. Heeter and Frank S. Bangs, Jr., eds., Land Use Controls Annual, 1971 (1972).

22. Fla. Stat. Ann. §380.05(1)(a). For limitations upon what areas may be designated as of critical state concern see ibid., §380.05(2).

23. Ibid., §380.06(2). For definitional purposes "'Development of regional impact,' as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Ibid., §380.06(1).

24. Ibid., §380.06(2)(a)-(f). For the circumstances under which development may proceed even if it is of regional impact, see ibid., §380.06(5).

25. Telephone interview with Earl M. Starnes, Director, Division of State Planning, Department of Administration, Tallahassee, Florida, March 15, 1974.

26. Colo. Rev. Stat. Ann. §106-4 (Supp. 1971).

27. Telephone interview with Philip H. Schmuck, Director, State Division of Planning, Denver, Colorado, March 21, 1974. According to Mr. Schmuck, although Colorado is in ways ahead of some states with regard to land use control, "as far as an integrated approach to the whole land use question, Colorado isn't very far ahead of anybody."

28. See "Colorado Denies Olympics Taxes," New York Times, November 8, 1972, p. A-31, col. 1. For a supportive interpretation of this decision see John D. Vanderhoof, "An Affirmative View: Winter Games: An Olympian Conflict," 46 State Government 136-7 (1973). For a contrasting perspective see Richard D. Lamm, "An Opponent's View: Winter Games: An Olympian Conflict," ibid., pp. 138-40.

29. For one illustration of unregulated, rapid development in Colorado, see the discussion of Summit County in Miller, supra note 9, pp. 415-16. For a more general discussion of Colorado's development, see Reilly, The Use of Land, supra, note 17, pp. 44-6; "Colorado Study Shows Rural Land Losses," The Farm Index, November, 1973, p. 10.

30. Colo. Rev. Stat. Ann. §106-4-3(1)(a).

31. Interview with Philip H. Schmuck, supra, note 27.

32. Colo. Rev. Stat. Ann. §106-4-3(1)(b). Nevertheless, "roles, responsibilities, and authority" of the various governmental units involved in Colorado's land use planning are to be designated by the Commission's planning programs.

33. Ibid., §106-4-3(2)(a).

34. Ibid., §106-4-3(2)(b).

35. Interview with Philip H. Schmuck, supra note 27. In a few cases this procedure has formally been initiated, but as of 1974 the Governor had yet to issue an order prohibiting scheduled development.

36. For Colorado legislative action in 1974 reaffirming its county-municipal approach to land use management see "Land Use a Big Issue in Colorado Legislature," 63 National Civic Review 423 (1974).

37. Interview with Philip H. Schmuck, supra note 27.

38. Vt. Stat. Ann. tit. 10, §§6001-6091 (Supp. 1972). For a legal analysis of this Act and its application, see J. Jackson Walter, "The Law of the Land: Development Legislation in Maine and Vermont," 23 Maine L. Rev. 316 (1971); Note, "State Land Use Regulation," supra, note 2, at 883-84.

39. See, e.g., Austin Ranney and Willmore Kendall, Democracy and the American Party System (1956), pp. 192-93; Malcolm E. Jewell, The State Legislature (1969).

40. See Phyllis Myers, So Goes Vermont (1974), pp. 7-14, passim. For a description of features of Vermont politics see Duane Lockard, New England Politics (1959), ch. 2.

41. Miller, supra note 9, p. 415.

42. Thomas P. Salmon, "Vermont: Public Support for Land Use Controls," 46 State Government 197 (1973). Also see Bosselman and Callies, supra note 2, pp. 54-5; State Planning Office, Montpelier, Vermont, Vermont's Land Use Plan and Act 250 (1974), p. 1.

43. Telephone interview with Arthur Ristau, Director of Planning, State Planning Office, Montpelier, Vermont, March 11, 1974.

44. Vt. Stat. Ann. tit. 10, §6081. For requirements concerning conditions for permits, denial of applications, duration of permits, renewals and related matters see ibid., §§6082-6091. A subdivision is defined by the Act as a tract of land divided into ten or more lots to be resold. See ibid., §6001. Generally speaking, a development is defined in terms of ten or more acres, but if there are no zoning ordinances in the municipality having jurisdiction, development is defined in terms of one acre. Ibid.

45. Salmon, supra note 42, p. 197. For a discussion of the local, citizen-oriented character of these commissions, see Bosselman and Callies, supra note 2, pp. 59-71.

46. Philip Weinberg, "Regional Land-Use Control: Prerequisite for Rational Planning," 46 N.Y.U. L. Rev. 795 (1971).

47. Vt. Stat. Ann. tit. 10, §6041.

48. Ibid., §6042. This plan became law in April 1973. See Governor Salmon's comments in his article at supra note 42, pp. 197-200, passim. For details see State Planning Office, supra note 42; State Planning Office, Montpelier, Vermont, Vermont's Land Use and Development Law (1973).

49. Interview with Arthur Ristau, supra note 43.

50. Me. Rev. Stat. Ann. tit. 38, §§481-488 (Supp. 1973); Me. Rev. Stat. Ann. tit. 12, §§4811-4814; Me. Rev. Stat. Ann. tit. 12, §§683-689 (Supp. 1973). For general discussions of land use legislation in Maine see Philip M. Savage, "Toward a State Land Use Policy, The Maine Experience," in Slavin and Patton, supra note 3, pp. 5-10; Walter, supra note 38 at 332-39; Bosselman and Callies, supra note 2, pp. 187-99.

51. Telephone interview with Philip M. Savage, State Planning Director, State Planning Office, Augusta, Maine, March 11, 1974. See also Note, "State Land Use Regulation," supra note 2 at 875-6.

52. Me. Rev. Stat. Ann. tit. 12, §685-A(1).

53. Ibid., §685-A(3).

54. Ibid., §685-A(6).

55. Ibid., §685-B(1). The one exception is where the State Department of Environmental Protection reviews and approves the development under the Site Location and Development Act of 1970, Me. Rev. Stat. Ann. tit. 38, §§481-488 (Supp. 1973).

56. Me. Rev. Stat. Ann. tit. 12, §685-C(1).

57. Savage, supra note 50, p. 5.

58. Interview with Philip M. Savage, supra note 51.

CHAPTER 4 (Pages 28-41)

1. See the Standard State Zoning Enabling Act (SZEA) and the Standard City Planning Enabling Act (SPEA) in U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93d Congress: An Analysis of Legislative Proposals and State Laws, 93d Cong., 1st sess., 1973, pp. 480-92.

2. 272 U.S. 366 (1926).

3. For the scope of these activities see generally Dorn C. McGrath, Jr., "Implementing National Policies: Bigger Carrots, Bigger Sticks," in Land-Use Policies (1968), pp. 29-37; U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra note 1, pp. 99-114.

4. See, e.g., Marion Clawson, "Historical Overview of Land-Use Planning in the United States," in Environment: A New Focus for Land-Use Planning ch. 2 (Donald M. McAllister ed. 1973); Fred A. Shannon, The Farmer's Last Frontier: Agriculture, 1860-1897 (1945), ch. 12.

5. American Society of Planning Officials, Problems of Zoning and Land Use Regulation (1968), p. 72.

6. See U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra note 1, pp. 23-37.

7. See Land and the Environment, Vol. 3, No. 1, January 10, 1975, p. 4.

8. P.L. 78-521 (1944).

9. P.L. 83-560 (1954).

10. P.L. 87-703 (1962).

11. P.L. 88-365 (1964).

12. P.L. 89-754 (1966).

13. P.L. 91-190 (1969).

14. P.L. 91-258 (1970).

15. See 2 U.S. Code Cong. & Adm. News, 3148-3150; U.S., Congress, Senate, Committee on Government Operations, Toward a National Growth and Development Policy: Legislative and Executive Actions in 1970 and 1971, 92d Cong., 2d sess., 1972 (prepared by the Congressional Research Service, Library of Congress); U.S., Congress, Senate, Toward A National Growth Policy: Federal and

State Developments in 1972, 93d Cong., 1st sess., 1973 (prepared by the Congressional Research Service, Library of Congress).

16. 7 U.S.C. §1000.

17. Ibid., §1010.

18. Section 1011(e) of the Bankhead-Jones Act authorizes the Secretary
> To cooperate with Federal, State, territorial, and other public agencies and local nonprofit organizations in developing plans for a program of land conservation and land utilization, to assist in carrying out such plans by means of loans to State and local public agencies and local nonprofit organizations designated by the State legislature or the Governor, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively the purposes of this subchapter, and to disseminate information concerning these activities.

19. P.L. 92-419 §301(1). For conditions placed on this assistance, see ibid.

20. Ibid., §301(2).

21. For details and how the Act had been implemented prior to 1974 see Federal Register, Vol. 38, No. 201, October 18, 1973, pp. 29020-29061; U.S., Congress, Senate, Committee on Agriculture and Forestry, Guide to the Rural Development Act of 1972, 93d Cong., 1st sess., 1973.

22. Telephone interview with Shelley M. Mark, Director of the Hawaii Department of Planning and Economic Development, Honolulu, Hawaii, March 25, 1974; telephone interview with Earl M. Starnes, Director, Division of State Planning, Department of Administration, Tallahassee, Florida, March 15, 1974; telephone interview with Arthur Ristau, Director of Planning, State Planning Office, Montpelier, Vermont, March 11, 1974.

23. 16 U.S.C. 1434-1464. The Act's origins may be traced back at least to 1966. For its legislative history see 3 U.S. Code Cong. & Adm. News, 4776-4825 (1972); U.S., Congress, House, Committee on Merchant Marine and Fisheries, Coastal Zone Management, Hearings, 92d Cong., 1st sess., 1971; U.S., Congress, Senate, Committee on Commerce, Coastal Zone Management, Hearings, 92d Cong., 1st sess., 1971.

24. For discussion of this and other political aspects of the Act's passage see Zigurds L. Zile, "A Legislative-Political History of the Coastal Zone Management Act of 1972." 1 Coastal Zone Management J. 235 (1974); James A. Noone, "New Federal Program Seeks to Aid States in Control of Coastal-Area Exploitation," National Journal, Vol. 4, No. 50, December 9, 1972, p. 1889.

25. Noone, supra note 24, pp. 1895, 1898.

26. George C. Wilson, "Commerce Wins Fight Over Control of Coastal Zoning," Washington Post, October 2, 1973, A-2, col. 7.

27. Land Use Planning Reports, Vol. 2, No. 2, August 12, 1974, p. 3.

28. 16 U.S.C. §1452. The "coastal zone" was broadly defined as:

> the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of

or which is held in trust by the Federal Government, its officers or agents. Ibid., §1453(a).

29. Ibid., §1453(g).

30. Ibid., §1454(a). The first three annual grants are to cover up to two-thirds of management program costs. Subsequent grants are dependent on the state "satisfactorily" developing a management program. Ibid., §1454(c).

31. Ibid., §1454(b).

32. Ibid., §1455(a). These are matching grants, as are the management development program grants. The allocation of administrative grants is "based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: Provided, however, that no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section." Ibid., §1455(b). It should be mentioned, too, that the 1972 Act authorizes a third type of grant program to cover not more than half "of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of natural and human processes occurring within the estuaries of the coastal zone." Ibid., §1461. For provisions relating to appropriations see ibid., §1464.

33. Ibid., §1455(c)(1)-(9). For the Secretary's authority for developing and promulgating rules and regulations for carrying out the statute, see ibid., §1463. Under the 1972 Act, the Secretary of Commerce is also "authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone." Ibid., §1460(a).

34. See ibid., §1455(d).

35. Ibid., §1455(e)(1).

36. Ibid., §1455(e)(2). Any financial assistance to the states may be terminated by the Secretary "if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state had been given notice of the proposed termination and withdrawal for altering its program." Ibid., §1458(b).

37. Ibid., §1456(a).

38. Ibid., §1456(b).

39. Ibid., §1456(c)(1)-(2). Each November the Secretary is responsible for preparing and submitting an annual administrative report to the President, to be transmitted to the Congress. Among other things, this report is to summarize intergovernmental cooperation and coordination relating to protection and management of the coastal zones. Ibid., §1462(a)(7). For other required components of this report, see ibid., §1462.

40. Supra, ch. 2, pp. 9-12.

41. See Land Use Planning Reports, Vol. 2, No. 19, June 17, 1974, pp. 1-3.

42. For general accounts and assessments of S. 268 see Note, "The Land Use Policy and Planning Assistance Act of 1973: Legislating a National Land Use Policy," 41 Geo. Wash. L. Rev. 604-625 (1973); American Enterprise Institute for Public Policy Research, "Land Use Policy and Planning Bills," October 8, 1973, pp. 1-36; David S. Broder, "Land Use Bill: 'Important as Watergate,'" Washington Post, August 1, 1973, p. A-26, col. 3; Gladwin Hill, "Land Use: A Tide Turns--Where?" New York Times, September 9, 1973, p. E-18, col. 1; Richard H. Slavin, "An Interest Beginning," 46 State Government 201 (1973).

43. For discussions of earlier versions of S. 268 and related proposals see Morris K. Udall, "Toward a National Land Use Policy for Urban America," 12 Ariz. L. Rev. 733, 745-747 (1970); James A. Noone, "Senate, House Differ on Approaches to Reform of Nation's Land-Use Laws," National Journal, July 27,

1972, pp. 1192-1201; Ira Michael Heyman, "Federal Impacts on Land-Use Regulation," in Frank S. Bangs, Jr., ed., Land Use Controls Annual, 1972 (1973), pp. 7-14; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act of 1972, 92d Cong., 2d sess., 1972; U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy, Hearings, 92dCong., 1st sess., 1971; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Papers on National Land Use Policy Issues, 92d Cong., 1st sess., 1971 (prepared by Massachusetts Institute of Technology and Boston University).

44. Land Use Policy and Planning Assistance Act, §102(b). All references to the Land Use Policy and Planning Assistance proposal are taken from the bill as passed by the Senate. See Congressional Record-Senate, June 21, 1973, pp. 11663-11672.

45. "Areas of critical environmental concern" were explained at §601(i), ibid., as:

> areas as defined and designated by the State on non-Federal lands where uncontrolled or incompatible development could result in damage to the environment, life or property, or the long term public interest which is of more than local significance. Such areas, subject to State definition of their extent, shall include--
>
> (1) "Fragile or historic lands" where uncontrolled or incompatible development could result in irreversible damage to important historic, cultural, scientific,or esthetic values or natural systems which are of more than local significance, . . . ;
>
> (2) "Natural hazard lands" where uncontrolled or incompatible development could unreasonably endanger life and property, . . . ;

(3) "Renewable resource lands" where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water, food, and fiber requirements of more than local concern, . . . ;

(4) such additional areas as the State determines to be of critical environmental concern.

46. S. 268 defined "key facilities" as:

(1) public facilities, as determined by the State, on non-Federal lands which tend to induce development and urbanization of more than local impact, including but not limited to--

(A) any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;

(B) major interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways;

(C) major frontage access streets and highways, both of State concern; and

(D) major recreational lands and facilities;

(2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

Ibid., §601(j).

47. "Large scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining

what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

Ibid., §601(k).

48. As defined by §601(1), ibid., the phrase "land sales or development projects" referred to:

> any of the activities set forth in clauses (1) through (3) below which occur ten miles or more beyond the boundaries of any standard metropolitan statistical area or of any other general purpose local government certified by the Governor as possessing the capability and authority to regulate such activities:
>
> (1) the partitioning or dividing into fifty or more lots for sale or resale primarily for housing purposes within a period of ten years of any tract of land, or tracts of land in the same vicinity, owned or controlled by any developer;
>
> (2) the construction or improvement primarily for housing purposes of fifty or more units within a period of ten years on any tract of land, or tracts of land in the same vicinity, owned or controlled by any developer, including the construction of detached dwellings, town houses, apartments, and trailer parks, and adjacent uses and facilities, whatever their form of ownership or occupancy; and
>
> (3) such other projects as may be designated by the State.

49. Ibid., §202(a). Procedures for determining continuing grant eligibility were described at §306, ibid. These were generally that (1) the Interagency Advisory Board on Land Use Policy, described in §305, had an obligation to advise the Secretary of Interior on the adequacy of a state's land use program; (2) that the Administrator of the Environmental Protection Agency had to determine that the state's program of land use was compatible with federal pollution laws under EPA's jurisdiction; and (3) that the Secretary of Housing and Urban Development had likewise determined that the program was compatible with S. 268 and the Housing Act of 1954, §701, as amended. If, after all this, the Secretary of Interior found that a state was in noncompliance with S. 268, his decision was required to be affirmed by an ad hoc review board, appointed by the President, before grants were terminated. For federal actions in the absence of state eligibility, see §208. Section 208 was not thoroughly discussed in this study. However, it should be noted that the topic of federal actions in the absence of state eligibility had controversial features. In particular, these involved questions of sanctions--whether federal grants for other purposes related to land use should be cut in states unwilling to develop or effectuate land use plans. See "Land Use: The Rage for Reform," Time, October 1, 1973, p. 98; James A. Noone, "Senate Committee Acts on Land Reform, Bill Would Aid States' Planning Role," National Journal, June 2, 1973, p. 794. Note, however, that sanctions were deleted prior to the Senate's passage of S. 268. Similar sanctions were removed from the House version.

50. Land Use Policy and Planning Assistance Act, §203(a)(1) and (2).

51. These five requirements are listed at ibid., §203(a)(3)(A) through (J).

52. Ibid., §203(b).

53. U.S. Constitution, article 1, section 10.

54. Land Use Policy and Planning Assistance Act, §205(a).

55. Ibid., §304(c)(3).

56. Ibid., §304(c)(4).

57. See supra, ch. 2, pp. 9-12.

58. See supra, note 41.

CHAPTER 5 (Pages 42-54)

1. Robert C. Weaver, 'National Land Use Policies--Historic and Emergent," 12 U.C.L.A. L. Rev. 719 (1965).

2. Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (1971).

3. See, e.g., Karlyn Baker, "Slump Hits Region's Second-Home Land Sales," Washington Post, October 23, 1974, p. A-1, col. 1.

4. The small towns program was designed to provide federal grants and loan guarantees to develop new communities which would be planned to avoid common land use dilemmas. But key aspects of the program are now officially suspended by the Department of Housing and Urban Development, and the fifteen new towns may ultimately go bankrupt and dry up. See Thomas W. Lippman, "HUD Retreats From New Towns Idea," Washington Post, January 14, 1975, p. A-1, col. 2; Land and the Environment, January 24, 1975, Vol. 3, No. 2, p. 11.

5. Land and the Environment, Vol. 3, No. 1, January 10, 1975, p. 4.

6. See the anticipated state responses discussed in a seven-part series in Land Use Planning Reports, beginning with Vol. 2, No. 2, January 28, 1974, pp. 4-7.

7. Such a bill is now being designed. See, e.g., Jack Anderson, "Land Abuse," Washington Post, January 12, 1975, p. B-7, col. 1.

8. A corollary question is the extent to which such restrictions discriminate against economic or racial groups.

9. See John M. Degrove, "Land Use Planning: State-Local Roles," 63 National Civic Review 72-73 (1974). For additional illustrations see William K. Reilly, ed., The Use Of Land: A Citizen's Guide to Urban Growth (1973).

10. Construction Industry Association of Sonoma County v. City of Petaluma, 375 F. Supp. 574, 581 (1974). See also Rasa Gustaitis, "Calif. Ruling Hits Cities' Growth Curb Plans," Washington Post, February 11, 1974, A-2, col. 1; Land Use Planning Reports, Vol. 2, No. 2, January 28, 1974, pp. 7-8; Land Use Planning Reports, Vol. 2, No. 4, February 25, 1974, pp. 6-8.

11. At last word the decision was being appealed.

12. Telephone interview with Arthur Ristau, Director of State Planning, Montpelier, Vermont, March 11, 1974.

13. Telephone interview with Philip H. Schmuck, Director, Division of Planning, Denver, Colorado, March 21, 1974.

14. Telephone interview with Earl M. Starnes, Director, Division of State Planning, Department of Administration, Tallahassee, Florida, March 15, 1974.

15. See, e.g., Charles R. Adrian, Governing Our Fifty States and Their Communities (1963), p. 19.

16. Land Use Policy and Planning Assistance Act, §305.

17. Quoted in James A. Noone, "Senate Committee Acts on Land Reform; Bill Would Aid States' Planning Role," National Journal, June 2, 1973, p. 796.

18. Hugh L. LeBlanc and D. Trudeau Allensworth, The Politics of States and Urban Communities (1971), p. 366.

19. For one illustration of how the United States Congress has attempted to address potential problems in intergovernmental land use coordination, see the discussion of the 1972 Coastal Zone Management Act at supra, ch. 4, pp. 32-36.

20. Emmette S. Redford, David B. Truman, Andrew Hacker, Alan F. Westin, and Robert C. Wood, Politics and Government in the United States (1965), p. 701.

21. See K.C. Wheare, Federal Government (1963), ch. 11.

22. As has been suggested, some of these implications dissoved when S. 268 passed without provisions to penalize states which failed to develop land use plans or to enforce them. President Nixon and Sen. Henry Jackson had originally supported sanctions, insisting that the federal government withhold certain percentages of other grants in areas related to land use if the states fell short of the bill's requirements. However, it seems unlikely that a future act will include these provisions, which are intensely opposed by many state officials.

23. U.S.,Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, Hearings, 93d Cong., 1st sess., 1973, Part 1, p. 60.

24. Congressional Record-Senate, June 21, 1973, p. S11655. Or as stated in a more restrained manner Sen. Paul J. Fannin (R-Ariz.):

> There are situations . . . that I think make manifest the need for action. I suggest . . . that the States do have the authority. Sometimes they do not act quickly enough; sometimes they are not as responsive as soon as we would hope they would be; but I do think that land use policy and assistance is an area that ought not be invaded by the Federal Government.

Ibid., p. S11651.

25. Quoted in Leonard Downie, Jr., "The Ambush of the Land Bill," Washington Post, March 10, 1974, p. B-3, col. 1.

26. See generally, Daniel J. Elazar, ed. The Politics of American Federalism, (1969); William H. Riker, Federalism: Origins, Operations, Significance (1964); Morton Grodzins, The American System: A New View of Government in the United States (1966); Daniel J. Elazar, American Federalism: A View from the States (1972).

27. Elizabeth H. Haskell, "State Governments Tackle Pollution," Environmental Science and Technology, Vol. 5, No. 11, November, 1971, p. 1092.

28. Rogers C. B. Morton, "Land Use: The National Environmental Strategy," 46 State Government 148 (1973).

29. See the "marble cake" theory of federalism in Morton Grodzins, "Centralization and Decentralization in the American Federal System," pp. 1-4 in Nation of States: Essays on the American Federal System (Robert A. Goldwin ed. 1963).

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Listed here are Books written by staff members and published, and Project Reports (published and unpublished). At least one copy of the Final Report of each project is accessible for reading in the library of the Program, as well as in the Special Collections Section of the main University library. However, no copies are available for distribution. Sometimes copies of these reports are available from the sponsoring agency, and when possible, reference numbers for them are cited.

**A Critical Review of the Marine Science Commission Report, 1969.**
Thomas CLINGAN (ed.). A report. 144 pages. Available from Marine Technology Law Society, 1730 M St., N.W., Washington, D. C.

**A National Criminal Justice Reference Service.**
James E. MAHONEY and David WEEKS. A report. January 1971, 36 pages. Prepared for the Law Enforcement Assistance Administration, Department of Justice, Washington, D. C. The model for an information reference system recommended in this report was the basis for a system which is now national in scope and which is broadening into international application.

**A Workbook on Alternative Future Life Styles Related to Energy Demand.**
Vary T. COATES. A report. August 1973, 192 pages. Prepared for the Ford Foundation Energy Policy Project.

**An Integrated Strategy for Aircraft/Airport Noise Abatement.**
Louis H. MAYO. A report. September 1973, 264 pages. A Legal/Institutional Analysis of Section 7 of the Noise Control Act of 1972 and proposals based thereon. Prepared for the Environmental Protection Agency, Office of Noise Control Programs.

**Analysis of the Need For and Feasibility of More Effective Distribution of Government-Supported Non-Written Material.**
Joseph B. MARGOLIN and Educational Policy Group. A report. April 1970. Prepared for the U.S. Office of Education, this report was used as a basis for a book entitled "The Dissemination of Audio-Visual Materials: A Study of the Systems that Supply our Schools." The writing of the book is supported by a grant from the Ford Foundation. Publication is expected in 1974.

**Application of Systems Analysis to Government Operations.**
Guy BLACK. New York: Frederick A. Praeger, 1968, 186 pages ($15). Library of Congress No. 68-18914. A book clarifying in a very short space a large number of difficult concepts and ideas surrounding the application of systems analysis.

**Candidates and Priorities for Technology Assessments: A Survey of Federal Executive Agency Professionals.**
Howard C. REESE with Peter R. Bankson, George E. HUMPHRIES, and Ben F. Sands, Jr. A report. July 1973, 119 pages. A survey by questionnaires and interviews of middle-to-upper-level Federal officials to determine technological developments in need of technology assessment. Data from both modes resulted in 457 nominees and 367 candidates for technology assessment. Prepared for the National Science Foundation (RANN/ERPA).

**Case Studies on the Evaluation of Health, Education and Welfare Programs**
James G. ABERT (ed.) May 1974. A volume of twenty-one case studies with commentary, which the student and practitioner of evaluative research will find useful and interesting. About 500 pages. Prepared for the Russell Sage Foundation.

**Citizen Group Uses of Scientific and Technological Information in Nuclear Power Cases.**
Steven EBBIN and Raphael KASPER. A report. August 1973, 2 volumes, 343 pages. Prepared for the National Science Foundation. This report was used as a basis for a book, "Citizen Groups and the Nuclear Power Controversy: Uses of Scientific and Technological Information" published by MIT Press in January 1974.

**Computers in the Classroom: An Interdisciplinary View of Trends and Alternatives.**
Joseph B. MARGOLIN and Marion R. MISCH (editors). New York: Spartan Books, 1970. ($14). A book concerning future computer uses in elementary and secondary education, this book is based on a report prepared for the U.S. Office of Education in the Autumn of 1967 entitled "Education in the 70's" (see below).

**Decision to Go to the Moon: Project APOLLO and the National Interest.**
John M. LOGSDON. Cambridge, Mass.: M.I.T. Press, 1970. LC 73-110230. A political scientist examines the influence of men and events on the decision-making process. A thorough historical record of this event.

**Dissemination of Audio-Visual Materials: A Study of the Systems that Supply our Schools.**
Joseph B. MARGOLIN and the Educational Policy Group. A book to be published in 1974, the writing of which is supported by a grant from the Ford Foundation. It is based on a report prepared for the U.S. Office of Education in April 1970 entitled "Analysis of the Need For and Feasibility of More Effective Distribution of Government-Supported Non-Written Material."

**Education in the 70's.**
Joseph B. MARGOLIN and Marion R. MISCH. A

report. Autumn 1967. Prepared for the U.S. Office of Education, this report was used as a basis for a book published by Spartan Books, New York in 1970 entitled "Computers in the Classroom: An Interdisciplinary View of Trends and Alternatives."

**Effect of Changing Patterns and Levels of Federal Research and Development Funding on Industry.**
Guy BLACK. A report. July 1973, 448 pages. Prepared for the National Science Foundation, Industry Studies Group.

**Effects of Limited-Access Highways on Nearby Churches.**
Joel GARNER with Joseph L. TROPEA. A report. October 1971, 25 pages. Prepared for the Federal Highway Administration.

**Evaluation of Guidelines and Noise-Related En-Environmental Impact Statements**
Louis H. MAYO and Study Team. Final report, March 1974, Two Parts, 3 vol. *Part One:* Vol. 1, "NEPA Section 102(2) (C) Environmental Impact Statements Relating to Potential Noise Impacts of Federally Funded Projects," 116 pp. *Part Two:* Vols. 2 (250 pp.), 3 (251 pp.), "A Legal/Institutional Analysis of the Public Health and Welfare Mandate of the Noise Control Act of 1972." Prepared for the Environmental Protection Agency, Office of Noise Control Programs.

**Evaluative Jurisprudence: The Role of Legal System in the Maintenance of Control over the Direction and Rate of Value-Institutional Change in Modern Technological Society.**
Louis H. MAYO. September 1972, 400 pages. Experimental Class Materials for use in the GWU National Law Center Course on Jurisprudence. Revised September 1973, 300 pages.

**Evaluative Mechanisms for the Public Experimental Program of the National Endowment for the Humanities.**
Guy BLACK and James E. MAHONEY. A report. September 1969, 3 large volumes. Prepared for the National Endowment for the Humanities, Washington, D. C.

**Federal Contributions to Management: Effects on the Public and Private Sectors.**
David S. BROWN (editor). New York: Praeger Publishers, 1971, 405 pages. This book was based on papers presented before a series of seminars on "Federal Contributions to Management" sponsored by the Program of Policy Studies in Science & Technology during the Spring and Fall of 1968.

**Fostering Urban Transportation Activities in Universities: Recommendations to the Urban Mass Transportation Administration**
Charlton R. PRICE and Study Team. Final Report. February 1974, 110 pages. NTIS PB 229-613/AS ($8.75 hard copy, $1.45 microfilm). Prepared for the Urban Mass Transportation Administration, U.S. Department of Transportation.

**Homeowner's Title Registration Corporation: A Program to Reduce the Land-Related Costs of Housing.**
James M. BROWN. A report. February 1972, 4 volumes, 900 pages. Prepared for the Office of Economic and Market Analysis, Department of Housing and Urban Development, Washington, D. C.

**Innovation Information and Analysis Project.**
Wesley L. TENNANT. First Quarterly Report. July 1973. Prepared for the National Science Foundation, National Research and Development Assessment Program (RDA).

**International Participation in an Experimental Earth Resources Survey Satellite Program.**
John HANESSIAN, Jr. and John M. LOGSDON. A report. April 1970, 114 pages. Prepared for the Office of International Affairs, NASA.

**Inventory and Appraisal of George Washington University Activities in Urban Social/Minority Group Problem Areas.**
Program of Policy Studies in Science & Technology. A report. May 1968, 70 pages. Prepared for the President of The George Washington University.

**Laws and Regulatory Schemes for Noise Abatement.**
Louis H. MAYO. A report. December 1971, 638 pages. ($9). Prepared for the Office of Noise Abatement and Control, Environmental Protection Agency, Washington, D. C. EPA Report #NTID 300.4; available from NTIS as PB 206-719.

**Legal, Economic, and Technical Aspects of Liability and Financial Responsibility as Related to Oil Pollution, Volume II: Study.**
Erling ROSHOLDT. A report. December 1970, 347 pages. Prepared for the U.S. Coast Guard, Washington, D. C. Available from NTIS as *PB 198-176.* [Vol. I, "Oil Pollution Liability and Financial Responsibility: Report." December, 1970, was prepared by the U.S. Coast Guard. 25 pages.]

**Political Economy of the Space Program.**
Mary A. HOLMAN. Palo Alto, California: Pacific Books, 1973 (still in press).

**Processes of Technological Innovation: A Conceptual Systems Model**
Ellis R. MOTTUR. A report. January 1968, 297 pages. Prepared for the National Bureau of Standards Office of Invention & Innovation and the Arms Control & Disarmament Agency, this report covers the first phase of the Technological Innovation Policy Project. Internal Reference No. NBS 9689. [The final report, "Technological Innovation for Civilian, Social purposes," was submitted in July 1971. (553 pages)].

**Revitalization of Small Communities: Transportation Options.**
Vary T. COATES. First Phase Report. July 1973, 2 volumes, 240 pages. Volume 2 is a Bibliographic review of literature in this area. Prepared for Department of Transportation, Office of Urban Transportation Systems.

**Social Impacts of Civil Aviation and Implications for R&D Policy.**
Louis H. MAYO and Civil Aviation Study Group. A report. April 1971, 220 pages. Prepared for the Joint DOT/NASA Civil Aviation R&D Policy Study (TST-30), Washington, D. C. Published by NASA in September 1971 as NASA CR-1988.

**Strategies for the Use of Mass Communications Media in the Technologically Developing Nations.**
Joseph B. MARGOLIN and Educational Policy Group. A report. November 1971, 574 pages in five volumes. Prepared for the U.S. AID/AED, Washington, D. C.

**Technology and Public Policy: The Process of Technology Assessment in the Federal Government.**
Vary T. COATES. A report. July 1972, 650 pages. Available from NTIS as follows:

Summary Report (50 pp.) PB-211455 $3.75
Vol. 1, Final Report (350 pp.) PB-211453 $9.00
Vol. 2, Appendices (250 pp.) PB-211454 $6.75

Prepared and supported in part by the National Science Foundation's program of Research Applied to National Needs (RANN).

**Technology Assessment Applied to Urban Solid Waste Management.**
Henry BRADY and Betsy AMIN-ARSALA. A report. December 1971, 190 pages. Prepared for the National Science Foundation in cooperation with EcoSystems, Inc.

**Technology Assessment Implementation Project.**
Raphael KASPER and Ellis MOTTUR. A report. June 1973, 2 volumes, 522 pages. Prepared for the National Science Foundation (RANN/ERPA) to develop detailed plans for further, in-depth, interdisciplinary research projects on Society's Acceptance and Implementation of Technology Assessments.

**Technology Assessment: The Proceedings of a Seminar Series.**
Raphael G. KASPAR (editor). A report. July 1969, 164 pages. Available from NTIS under no. *N69-40301*. [A book based thereon was published by Praeger Publishers, New York in 1971 under Library of Congress—#LC 71-161909. (See below)].

**Technology Assessment: Understanding the Social Consequences of Technological Applications.**
Raphael G. KASPER (editor). New York: Praeger Publishers, 1971. ($15). Library of Congress 71-161909. A book based on the July 1969 report of the discussions and proceedings of a seminar series on Technology Assessment.

**Technological Innovation for Civilian, Social Purposes.**
Ellis R. MOTTUR. Final report of a two-phase study. July 1971, 553 pages. Prepared for the Office of Invention and Innovation, National Bureau of Standards, and for the U.S. Arms Control and Disarmament Agency. [The first phase report, "The Processes of Technological Innovation: A Conceptual Systems Model" was submitted in January 1968 (297 pages)]. A separate volume of 47 pages is entitled "A Bibliography on Technological Innovation" which may be of benefit to other researchers in this area.

**Trends in Western European Political and Economic Policies, 1969-1985.**
Richard F. ERICSON. August 1969, 36 pages. A summary statement of the history and then current status of the Interdisciplinary Systems and Cybernetics Project.

**Trends in Western European Political and Economic Policies, 1969-1985.**
John HANESSIAN, Jr. and International Studies Group. A report. September 1970, 5 volumes, 516 pages. Prepared for Battelle Memorial Institute as part of a contract for the Office of Scientific Research, U.S.A.F.

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## PROGRAM OF POLICY STUDIES IN SCIENCE AND TECHNOLOGY
### Additional Publications, Reports, Books, — February 1975

**MONOGRAPHS**

**Land Use Politics and Law in the 1970's — GWPS-MON 28**
Charles M. LAMB. A study sponsored by the Office of User Affairs, NASA. January, 1975, 80 pages. Initial distribution from Program of Policy Studies; all subsequent copies from NTIS.

**REPORTS**

**Trends in Federal Land Use Law Relating to Inventories, Monitoring, and Evaluation**
Charles M. LAMB. A report to the Office of User Affairs, NASA. April, 1974. 86 pages. Available from NTIS as N 74-21623.

**Evaluation of the Effectiveness of Illustrated Print Media (Nonverbal) on Family Planning Attitudes Among Colombians**
Joseph B. MARGOLIN and Marion R. MISCH. A report to AID/U.S. Department of State. In-depth social/psychological study of the motivations of poor women in less developed countries about contraception and abortion, including their attitudes, actual practices, effectiveness of certain media in improving attitudes and behavior for family planning. 112 pages.

**The Southern Regional Conference on Technology Assessment — A Summary of a Conference**
Vary T. COATES and John E. MOCK. A report to the Office of Intergovernmental Science and Research Utilization, NSF. October 1974. Conference held May 6-8, 1974 on the campus of the Georgia Institute of Technology, Atlanta, Georgia. 36 pages. Initial distribution from Program of Policy Studies; all subsequent copies from NTIS.